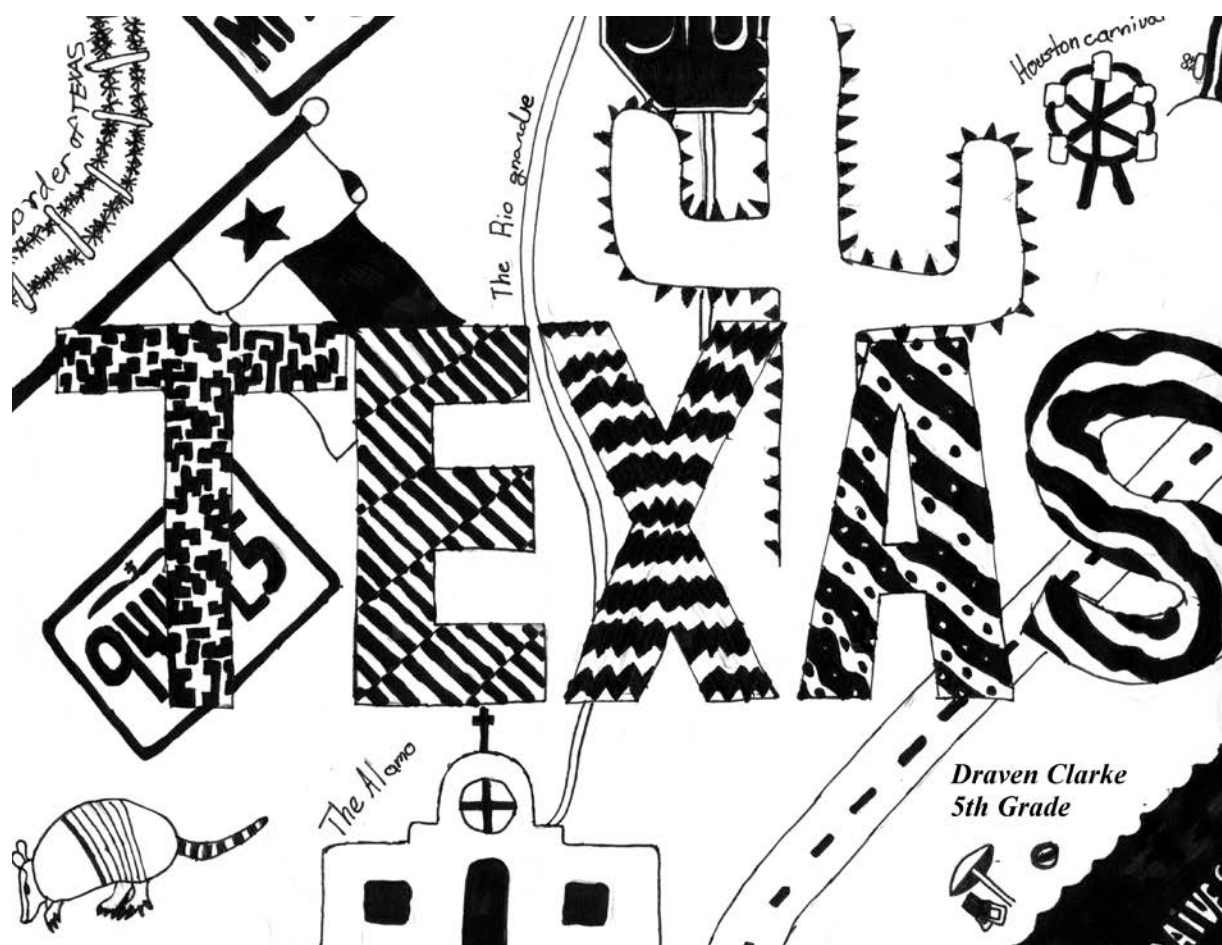


# TEXAS REGISTER

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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://texasattorneygeneral.gov/og/open-government>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
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**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

##### SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

###### 19 TAC §22.262

The Texas Higher Education Coordinating Board (Coordinating Board) adopts on an emergency basis, amendments to §22.262, concerning the allocation process for the Texas Educational Opportunity Grant (TEOG). The amendments are being adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoptions of the rule on less than 30 day notice. Specifically, amendments to §22.262 remove the current, temporary "hold harmless" language and outline an allocation process based on enrollments weighted by average tuition and fees, as represented by the maximum TEOG award level. New, temporary "hold harmless" language is also implemented for the public community colleges.

Section 22.262(d) is struck from the rule, as it is no longer required.

Amendments to §22.262(g) align the rule with the G.A.A. Higher Education Coordinating Board Rider 22.

The Coordinating Board made the finding that the amendments to these sections should be adopted on an emergency basis because the General Appropriations Act of the 84th Texas Legislature passed both houses and was signed by the Governor, affecting the 2016-2017 biennium. The General Appropriations Act provides funding for public community colleges for the TEOG Program as a separate strategy from public technical and state colleges, thus requiring negotiated rule-making for a new allocation process. The effective date of the General Appropriations Act is September 1, 2015, and affects students enrolling in public community, technical, and state colleges in the fall 2015 semester. The next regular quarterly meeting of the Board is scheduled for July 23, 2015, which would not allow public community, technical, and state colleges adequate time for implementation to be in accord with the effective date of the General Appropriations Act. Therefore, the amendments to these sections must be adopted on less than 30 day notice pursuant to §2001.034 of the Government Code.

The intent of the amendments is to incorporate into existing rule changes and provisions developed by the Negotiated Rule-Making Committees, one representing public community colleges

and one representing public technical and state colleges. Language has been changed for the allocation methodology used to determine TEOG funding levels for each institution.

The amendments are adopted under Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules to implement the Texas Educational Opportunity Grant (TEOG) Program.

§22.262. *Allocation and Reallocation of Funds.*

(a) Allocations for Fiscal Year 2015.

(1) Initial Year Funds. Available program funds for initial year awards will be allocated to each participating institution in proportion to each institution's share of the state's undergraduate financial aid population with significant amounts of financial need.

(2) Renewal Year Funds. Available program funds for continuation or renewal awards will be allocated in proportion to the number of prior year recipients reported for each institution, adjusted for the institution's student retention rate.

(b) Allocations for public junior colleges for Fiscal Year 2016 and Later [and Fiscal Year 2017]. Allocations are to be determined on an annual basis as follows:

(1) The allocation base for each eligible institution will be the number of [aggregate 9-month cost of attendance for] students it reported in the most recent Financial Aid Database Report who met the following criteria:

(A) were classified as Texas residents,

(B) were enrolled as undergraduates half-time, three-quarter time or full-time [were first-time entering undergraduates enrolled at least half-time],

(C) completed either the FAFSA or the TASFA, and

(D) have a 9-month Expected Family Contribution less than or equal to the Federal Pell Grant eligibility cap for the year reported in the Financial Aid Database Report.

(2) Each institution's percent of the available funds will equal its percent of the state-wide need as determined by multiplying each institution's enrollments by the respective award maximums [total cost of attendance] of students who meet the criteria in subsection (b)(1) of this section. [; except that:]

[(A) if statewide funding equals or exceeds the amount allocated for FY 2015; no institution will receive less than 95 percent of its allocation for FY2015; and]

[(B) if statewide funding is less than the amount available for FY 2015; each institution will receive an amount equal to its FY 2015 allocation, multiplied by a factor equal to the new year's statewide total appropriation divided by the FY2015 statewide appropriation. ]

(3) No institution's annual allocation will be reduced by more than 15 percent of the prior year's annual allocation not including

any reallocations that occurred in that prior year. This provision will apply to FY2016 and FY2017 allocations after which it will expire.

(c) Allocations for public technical colleges and public state colleges for Fiscal Year 2016 and Later. Allocations are to be determined on an annual basis as follows:

(1) The allocation base for each eligible institution will be the number of students it reported in the most recent Financial Aid Database Report who met the following criteria:

(A) were classified as Texas residents,

(B) were enrolled as undergraduates half-time, three-quarter time or full-time,

(C) completed either the FAFSA or the TASFA, and

(D) have a 9-month Expected Family Contribution less than or equal to the Federal Pell Grant eligibility cap for the year reported in the Financial Aid Database Report.

(2) Each institution's percent of the available funds will equal its percent of the state-wide need as determined by multiplying each institution's enrollments by the respective award maximums of students who meet the criteria in subsection (b)(1) of this section.

(d) [e] Verification of Data for Fiscal Year 2016 and Later. Allocation calculations will be shared with all participating institutions for comment and verification prior to final posting and the institutions will be given 10 working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the allocation report accurately reflects the data they submitted or to advise Board staff of any inaccuracies.

[(d) Allocations for Fiscal Years 2018 and later will be made based on rules developed through the use of Negotiated rulemaking in accordance with Texas Government Code Chapter 2008 and 19 TAC, Part 1, Chapter 1, §1.14, as well as Senate Bill 215, 83rd Texas Legislature, Regular Session (2013).]

(e) Reallocations. Institutions will have until the close of business on February 20 or the first working day thereafter if it falls on a

weekend or a holiday to encumber the program funds that have been allocated to them. On that date, institutions lose claim to any unencumbered funds, and the unencumbered funds are available to the Board for reallocation to other institutions. For the institutions that request additional funds, reallocations for amounts up to the amount requested per institution will be calculated on the same basis as was used for the allocation for the relevant fiscal year. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

(f) Disbursement of Funds to Institutions. As requested by institutions throughout the fall and spring terms, the Board shall forward to each participating institution a portion of its allocation of funds for immediate release to students or immediate application to student accounts at the institution.

(g) Authority to Transfer Funds. Institutions participating in a combination of the Texas Educational Opportunity Grant and Texas College Work-Study Programs, in accordance with instructions from the Board, may transfer in a given fiscal year up to the lesser of 10 percent or \$20,000 between these programs. This threshold is applied to the program from which the funds are being transferred.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502543

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: July 6, 2015

Expiration date: November 2, 2015

For further information, please call: (512) 427-6114





# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 4. AGRICULTURE

### PART 2. TEXAS ANIMAL HEALTH COMMISSION

#### CHAPTER 51. ENTRY REQUIREMENTS

##### 4 TAC §51.7, §51.8

The Texas Animal Health Commission (commission) proposes amendments to §51.7, concerning All Livestock - Special Requirements, and §51.8, concerning Cattle, in Chapter 51, which is entitled "Entry Requirements". The purpose of the amendments is to change the timeframe that Certificates of Veterinary Inspection (CVI) are valid for specific animals from states that have been affected with Vesicular Stomatitis (VS). Also, the commission is changing the age for breeding bulls that need a Bovine Trichomoniasis (Trich) test to enter the state.

VS is a viral disease that primarily affects horses and cattle and occasionally swine, sheep, goats, llamas, and alpacas. It is known to be an endemic disease in the warmer regions of North America. In the past decade, the Southwestern and Western United States have experienced a number of VS outbreaks. Outbreaks usually occur during the warmer months, often along waterways. In some years, only a few premises in a single state have been affected; however, in other years, multiple states and many premises have been involved.

The largest outbreak of VS in the United States in the last ten years occurred last May and has persisted to as recently of March of this year and affected numerous states. There were a total of 435 VS-positive premises confirmed in 4 states; Arizona (2 premises), Colorado (370 premises), Nebraska (1 premise), and Texas (62 premises). There were also many more suspect and presumptive positive premises which were quarantined and managed during the response. Additionally during the outbreak, 140 investigations were initiated in surrounding states for reports of vesicular lesions, but with VS-negative results.

The commission is proposing to reduce the validity of the timeframe from 30 days to 14 days for CVIs issued for any equine, bovine, porcine, caprine, ovine, or cervidae that originate from a state affected with VS. This is to provide greater protection for Texas animals. With the recent spread of VS in Texas and other states, this ensures that a Veterinarian has seen the animals within 14 days of issuance of the CVI and provides the commission with greater confidence that the animals do not show signs of VS. This requirement will remain in effect until the affected state has released the last quarantine or restrictions on premises and animals affected with VS.

Bovine Trich is a venereal disease of cattle. The commission has a Trich disease control program which currently requires that all

breeding bulls entering Texas have a Trich test if they are older than 12 months of age and older and do not qualify for an exception. The commission is adding a Trich testing exception for bulls that are 18 months of age or younger if the bull is accompanied by a state issued breeder's certificate of virgin status, and a certificate of veterinary inspection, which certify the bull's virgin status. The purpose of this exception is to harmonize standards with a majority of the states that have Trich test requirements for entry into their respective states, making it less confusing for producers to move cattle interstate.

##### FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact. Implementation of this rule poses no significant fiscal impact on small or micro-businesses, or to individuals.

##### PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to protect Texas' livestock industry from exposure to VS and ensure that a Veterinarian has seen the animals within 14 days of issuance of a CVI to provide greater confidence that the animals do not show signs of VS. The modification of the Trich testing requirements will establish harmonized standards with a majority of the states for those that are sending or receiving breeding bulls interstate.

##### LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

##### TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

##### REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at "comments@tahc.texas.gov".

#### STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.044, entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", the commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases".

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.049, entitled "Dealer Records", the commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer."

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.061, entitled "Establishment", if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases.

Pursuant to §161.081, entitled "Importation of Animals", the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of live-

stock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §161.112, entitled "Rules", the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. If the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

No other statutes, articles or codes are affected by the proposal.

#### §51.7. All Livestock - Special Requirements.

##### (a) Scabies.

(1) Livestock originating in scabies quarantined areas outside the State of Texas. Livestock originating in scabies quarantined areas outside the State of Texas must, in addition to other requirements, be accompanied by a certificate of veterinary inspection certifying that the herd of origin has been inspected and declared free of scabies infestation or exposure. Slaughter livestock originating in a quarantined area and consigned directly to an approved slaughter establishment for immediate slaughter must be accompanied by a certificate of veterinary inspection or a VS Form 1-27 permit issued by state or federal regulatory personnel certifying they are "scabies free."

(2) Any treated livestock. Any treated livestock must be accompanied by a certificate issued by state or federal regulatory personnel identifying the livestock treated and stating the date of treatment. If the livestock enter less than 14 days following treatment, the transporting vehicle must be placarded and billing marked in accordance with the Code of Federal Regulations. The livestock have been officially treated by one of the following methods:

(A) Dipping. The livestock have been dipped in Co-Ral or GX 118 (Prolate) under supervision of state or federal regulatory personnel within 10 days prior to shipment and transported in clean and disinfected vehicles.

##### (B) Ivermectin.

(i) The livestock have been treated with Ivermectin within 21 days prior to entry under the supervision of state or federal regulatory personnel in accordance with label directions.

(ii) The treated livestock must be kept physically separated from all untreated livestock for 21 days following treatment.

(iii) Ivermectin may not be used with female dairy cattle of breeding age. Livestock treated with Ivermectin must be withheld from slaughter according to label directions.

##### (C) Dectomax.

(i) The livestock have been treated with Dectomax within 21 days prior to entry under the supervision of state or federal regulatory personnel in accordance with label directions.

(ii) The treated livestock must be kept physically separated from all untreated livestock for 21 days following treatment.

(iii) Dectomax may not be used with female dairy cattle of breeding age, prerinuating calves, or calves to be processed for veal. Livestock treated with Dectomax must be withheld from slaughter according to label directions.

(b) Screwworm Requirements. All animals presented for entry into Texas from any area in which the screwworm is known to exist must be free of screwworms and screwworm fly eggs. Wounds (infested or noninfested) must be treated with United States Department of Agriculture approved screwworm killer and fly repellent. Animals other than lactating dairy animals and young animals under two weeks of age must be sprayed with a spray approved by the executive director.

(c) Fever Tick Requirements. All movement of livestock from or into the Texas Fever Tick Eradication Zone shall be in accordance with Chapter 41 of this title.

(d) Vesicular Stomatitis. No equine, bovine, porcine, caprine, ovine, or cervidae may enter Texas from a premise or area under quarantine for vesicular stomatitis. All equine, bovine, porcine, caprine, ovine, or cervidae from a vesicular stomatitis affected state must have a certificate of veterinary inspection issued within 14 days of the date of entry into Texas. A copy of the certificate of veterinary inspection must accompany such animal shipments at all times.

(e) Regulations on livestock imported from Mexico.

(1) All cattle moved into Texas from Mexico shall be identified with an "M" brand prior to moving to a destination in Texas. Metal ear tags applied in Mexico must not be removed from the animals.

(2) A copy of the certificate issued by an authorized inspector of the United States Department of Agriculture, Animal and Plant Health Inspection Service, for the movement of Mexico cattle into Texas must accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

#### §51.8. Cattle.

(a) Brucellosis requirements. All cattle must meet the requirements contained in §35.4 of this title (relating to Entry, Movement, and Change of Ownership). Cattle which are parturient, postparturient or 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers being shipped to a feedyard prior to slaughter, shall be officially individually identified with a permanent identification device prior to leaving the state of origin.

(b) Tuberculosis requirements.

(1) All beef cattle, bison and sexually neutered dairy cattle originating from a federally recognized accredited tuberculosis free state, or zone, as provided by Title 9 of the Code of Federal Regulations, Part 77, Section 77.8, or from a tuberculosis accredited herd are exempt from tuberculosis testing requirements.

(2) All beef cattle, bison and sexually neutered dairy cattle originating from a state or zone with anything less than a tuberculosis free state status and having an identified wildlife reservoir for tuberculosis or that have never been declared free from tuberculosis shall be tested negative for tuberculosis in accordance with the appropriate status requirements as contained in Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, prior to entry with re-

sults of this test recorded on the certificate of veterinary inspection. All beef cattle, bison and sexually neutered dairy cattle originating from any other states or zones with anything less than free from tuberculosis shall be accompanied by a certificate of veterinary inspection.

(3) All dairy breed animals, including steers and spayed heifers, shall be officially identified prior to entry into the state. All sexually intact dairy cattle, that are two months of age or older may enter provided that they are officially identified, and are accompanied by a certificate of veterinary inspection stating that they were negative to an official tuberculosis test conducted within 60 days prior to the date of entry. All sexually intact dairy cattle that are less than two months of age must obtain an entry permit from the Commission, as provided in §51.2(a) of this chapter (relating to General Requirements), to a designated facility where the animals will be held until they are tested negative at the age of two months. Animals which originate from a tuberculosis accredited herd, and/or animals moving directly to an approved slaughtering establishment are exempt from the test requirement. Dairy cattle delivered to an approved feedlot for feeding for slaughter by the owner or consigned there and accompanied by certificate of veterinary inspection with an entry permit issued by the commission are exempt from testing unless from a restricted herd. In addition, all sexually intact dairy cattle originating from a state or area with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate requirements for states or zones with a status as provided by Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, for that status, prior to entry with results of the test recorded on the certificate of veterinary inspection.

(4) All "M" brand steers, which are recognized as potential rodeo and/or roping stock, being imported into Texas from another state shall obtain a permit, prior to entry into the state, in accordance with §51.2(a) of this chapter and be accompanied by a certificate of veterinary inspection which indicates that the animal(s) were tested negative for tuberculosis within 12 months prior to entry into the state.

(5) All other cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with comparable tuberculosis status, would enter by meeting the requirements for a state with similar status as stated in paragraphs (1), (2) and (3) of this subsection.

(6) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status.

(A) To be held for purposes other than for immediate slaughter or feeding for slaughter in an approved feedyard or approved pen, must be tested at the port of entry into Texas under the supervision of the port veterinarian, and shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The test will be performed by a veterinarian employed by the commission or APHIS/VS.

(B) When destined for feeding for slaughter in an approved feedyard, cattle must be tested at the port-of-entry into Texas under the supervision of the port veterinarian; moved directly to the approved feedyard only in sealed trucks; accompanied with a VS 1-27 permit issued by commission or USDA personnel; and "S" branded prior to or upon arrival at the feedlot.

(7) Cattle originating from Mexico.

(A) All sexually intact cattle shall meet the requirements provided for in paragraph (6) of this subsection.

(B) Steers and spayed heifers from Mexico shall meet the federal importation requirements as provided in Title 9 of the Code of Federal Regulations, Part 93, Section 93.427, regarding importation

of cattle from Mexico. In addition to the federal requirements, steers and spayed heifers must be moved under permit to an approved pasture, approved feedlot, or approved pens.

(C) Cattle utilized as rodeo and/or roping stock shall meet the requirements set out in paragraph (6)(A) of this subsection and the applicable requirement listed in clauses (i) and (ii) of this subparagraph:

(i) All sexually intact cattle shall be retested annually for tuberculosis at the owner's expense and the test records shall be maintained with the animal and available for review.

(ii) All sexually neutered horned cattle imported from Mexico are recognized as potential rodeo and/or roping stock and must:

(I) be tested for tuberculosis at the port of entry under the supervision of the USDA port veterinarian;

(II) be moved by permit to a premise of destination and remain under Hold Order, which restricts movement, until permanently identified by methods approved by the commission, and retested for tuberculosis between 60 and 120 days after entry at the owner's expense. The cattle may be allowed movement to and from events/activities in which commingling with other cattle will not occur and with specific permission by the TAHC until confirmation of the negative post entry retest for tuberculosis can be conducted; and

(III) be retested for tuberculosis annually at the owner's expense and the test records shall be maintained with the animal and available for review.

(D) Regardless of reproductive status, test history, or Mexican State of origin, Holstein and Holstein cross cattle are prohibited from entering Texas.

(E) All cattle moved into Texas from Mexico shall be identified with an "M" brand prior to moving to a destination in Texas.

(F) A copy of the certificate issued by an authorized inspector of the United States Department of Agriculture, Animal and Plant Health Inspection Service, for the movement of Mexico cattle into Texas must accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

(G) Any certificate, form, record, report, or chart issued by an accredited veterinarian for cattle that originate from Mexico, have resided in Mexico or are "M" branded shall include the statement, "the cattle represented on this document are of Mexican origin."

(c) Trichomoniasis Requirements:

(1) A breeding bull that is 12 months of age or older may enter the state provided the bull is officially identified as provided by §38.1 of this title (relating to Definitions) and accompanied by a certificate of veterinary inspection stating the bull tested negative for Trichomoniasis with an official Real Time Polymerase Chain Reaction (RT-PCR) test as provided by §38.6 of this title (relating to Official Trichomoniasis Tests) within 60 days prior to the date of entry.

(2) A breeding bull that is 12 months of age or older is exempt from the testing requirement of paragraph (1) of this subsection if the bull meets one of the following requirements:

(A) The bull enters on and is moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this chapter, for the purpose of participating at a fair, show, exhibition or rodeo, remains in the state for less than 60 days from the date of

entry, and is isolated from female cattle at all times. The certificate of veterinary inspection shall include the entry permit number. A bull that is in this state on or after the 60th day from the date of entry shall test negative for Trichomoniasis with an official RT-PCR test.

(B) The bull enters on and is moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this chapter, directly to a feedyard that has executed a Trichomoniasis Certified Facility Agreement. The certificate of veterinary inspection shall include the entry permit number.

(C) The bull enters on and is moved by a permit, issued prior to entry from the commission, in accordance with §51.2(a) of this chapter, directly to a facility that tests the gain and feed conversion of cattle (bull test station) that isolates the bull from female cattle at all times. The certificate of veterinary inspection shall include the entry permit number. The bull shall return to the out-of-state premises destination directly from the bull test station or test negative for Trichomoniasis with an official RT-PCR test.

(D) A Texas bull that is enrolled in an out-of-state facility that tests the gain and feed conversion of cattle (bull test station) and isolates the bull from female cattle at all times may move directly to the Texas premises of origin. The certificate of veterinary inspection shall state the bull was enrolled in a bull test station and was isolated from female cattle.

(E) The bull is enrolled at an out-of-state semen collection facility, which complies with Certified Semen Services Minimum Requirements for Disease Control of Semen Produced for Artificial Insemination, that isolates the bull from female cattle at all times and the bull is moved directly from a semen collection facility into the state. The certificate of veterinary inspection shall state the bull was enrolled in a semen collection facility and was isolated from female cattle.

(F) The bull originates from a herd that is enrolled in a Certified Trichomoniasis Free Herd Program or other certification program that is substantially similar, as determined by the Executive Director, to the program requirements provided by §38.8 of this title (relating to Herd Certification Program--Breeding Bulls).

(G) The bull is 18 months of age or younger and accompanied by a commission or any state approved Trichomoniasis virgin status certificate and a certificate of veterinary inspection that includes a statement reflecting the bull's virgin status.

(3) All breeding bulls entering from a foreign country shall enter on and be moved by a permit, issued prior to entry from the commission, in accordance with §51.2(a) of this chapter, to a premises of destination in Texas and shall be placed under Hold Order and officially tested for Trichomoniasis with not less than three official culture tests conducted not less than seven days apart, or an official RT-PCR test, within 30 days after entry into the state. All bulls shall be isolated from female cattle at all times until tested negative for Trichomoniasis. The Hold Order shall not be released until all other post entry disease testing requirements have been completed. All bulls tested for Trichomoniasis shall be officially identified at the time the initial test sample is collected. The identification shall be recorded on the test documents.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Gene Snelson  
General Counsel  
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For further information, please call: (512) 719-0722



## TITLE 13. CULTURAL RESOURCES

### PART 7. STATE PRESERVATION BOARD

#### CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

##### 13 TAC §§111.25, 111.27, 111.34 - 111.47

The State Preservation Board (board) proposes amendments to §111.25 and §111.27 and new §§111.34 - 111.47, concerning rules and regulations of the board.

The proposed amendments clarify procedures of the board related to monuments and memorials on the Capitol Grounds and regulate animals on the Capitol Grounds. The proposed new rules are necessary to comply with statutory requirements.

Proposed amendment to §111.25 clarifies the type of legislative authorization is required for a new monument or memorial to be constructed within the Capitol complex. The proposed amendment to §111.27 prohibits visitors from bringing livestock on the Capitol grounds unless authorized by the board or needed for security purposes.

The proposed new §§111.34 - 111.44 regulate the safe movement and parking of vehicles in the Capitol complex. Texas Government Code §411.063 transferred authority over the safe movement and parking of vehicles in the Capitol complex from the Department of Public Safety to the board. The proposed rules are based on the rules that previously regulated the safe movement and parking of vehicles in the Capitol complex as rules of the Department of Public Safety. Proposed new rule §111.45 clarifies the board's sick leave pool procedures. Proposed new rule §111.46 clarifies the bid procedures of the board. Proposed new rule §111.47 clarifies the negotiation and mediation procedures of the board.

Cynthia Provine, Chief Financial Officer, State Preservation Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local governments.

John Sneed, Executive Director, State Preservation Board, has determined that for each year of the first five years the sections are in effect the public benefit will be consistency and clarifications of agency services in providing public use to the Capitol and Capitol Extension for organized activities, and for parking within the Capitol complex. There will be no effect on small or micro businesses and there is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposed amendments may be submitted in writing to Chris Currens, Director of Special Projects, P.O. Box 13286, Austin, Texas 78711. Comments may also be submitted electronically to [Chris.Currens@tsb.state.tx.us](mailto:Chris.Currens@tsb.state.tx.us) or faxed to (512)

475-3366. Comments must be submitted no later than 30 days from the date these proposed rules are published in the *Texas Register*.

The amendments and new rules are proposed under Texas Government Code §§443.007(b), 411.063, 661.002, 2156.005, and 2260.0052. Texas Government Code §443.007(b) authorizes the board to adopt rules concerning the buildings, their contents, and their grounds. Texas Government Code §411.063 authorizes the board to adopt rules for the safe movement and parking of vehicles within the Capitol complex. Texas Government Code §661.002 directs the board to adopt rules and prescribe procedures relating to the operation of the agency sick leave pool. Texas Government Code §2156.005 authorizes state agencies making purchases to adopt the comptroller's rules related to bid opening and tabulation. Texas Government Code §2260.0052 authorizes state agencies to adopt rules related to negotiation and mediation of certain contract disputes.

No other statutes, articles or codes are affected by the proposed amendments and new rules.

*§111.25. Memorials/Monuments on the Capitol Complex.*

(a) - (b) (No change.)

(c) Procedures for approval of memorials/monuments in the Capitol complex.

(1) No additional memorials and/or monuments shall be placed on historic Capitol grounds except as authorized by Texas Government Code §443.01525 and §443.01526.

(2) For any monument authorized by the legislature by current resolution or statute to be constructed within the Capitol complex, the office of the State Preservation Board shall be consulted concerning potential sites available on the Capitol complex. A grounds monument location map will be incorporated into the master plan to define potential locations.

(3) - (9) (No change.)

*§111.27. General Rules for Use of the Capitol, Capitol Extension, and Capitol Grounds.*

(a) Visitors and persons using the Capitol, Capitol extension, or Capitol grounds for any purpose are prohibited from:

(1) attaching signs, banners, or other displays to a part of the Capitol or to a structure, including a fence, on the grounds of the Capitol except as approved by the board;

(2) placing furniture in the Capitol or on the grounds of the Capitol for a period that exceeds 24 hours except as approved by the board;

(3) setting up or placing camping equipment, shelter, tents, or related materials in the Capitol or on the grounds of the Capitol except as approved by the board for special events;

(4) blocking ingress and egress:

(A) into the Capitol; or

(B) into rooms or hallways within the Capitol, except as approved by the board;

(5) conducting actions that pose a risk to safety;

(6) smoking in the public areas of the Capitol and Capitol extension;

(7) bringing balloons into the Capitol or Capitol extension; and[-]

(8) riding, leading, placing or displaying livestock, including but not limited to equine and bovine animals, except as approved by the board as part of a scheduled event, or as needed for security purposes.

(b) - (g) (No change.)

§111.34. General Parking Administration Rules.

Purpose. The purpose of this rule is to provide for the safe movement and parking of vehicles in Capitol Complex parking facilities for state employees, state officials, and the visiting public. The Department of Public Safety will administer, pursuant to Texas Government Code §411.063, and enforce, pursuant to Texas Government Code §411.067, the parking rules and policies of the State Preservation Board.

(1) The board will provide for a system of open, reserved, and defined-use employee parking and for visitor parking in the parking lots and parking structures, and in the public right of way designated as parking, within the Capitol Complex as defined by Texas Government Code §411.061, and shall regulate the use and administration of:

(A) reserved parking spaces in the parking lots and parking structures;

(B) open parking spaces in the parking lots and parking structures;

(C) parking spaces for carpooling in the parking lots and parking structures;

(D) parking spaces for employees meeting the provisions of the Americans with Disabilities Act (ADA);

(E) parking spaces for state agency fleet vehicles in the parking lots and parking structures;

(F) special event parking to the extent that it is not statutorily administered by other agencies;

(G) state parking areas outside of normal working hours for other purposes to the extent that it is not statutorily administered by other agencies;

(H) meter parking on street rights-of-way; and

(I) loading, commercial, customer service, and handicap parking zones on street rights-of-way.

(2) The board will not administer or enforce parking rules and policies for:

(A) parking facilities under the management and control of the Texas Workforce Commission;

(B) parking lots and parking structures outside the Capitol Complex; or

(C) city- or university-owned or controlled parking spaces, lots, or structures.

§111.35. Parking Administration.

Pursuant to Texas Government Code §411.063 the Department of Public Safety shall administer the registration of vehicles and assignment of parking in spaces, lots, and parking structures, the issuance and tracking of permits, and enforcement necessary for parking vehicles in the Capitol Complex, and all personnel required to administer and enforce the parking rules of the board.

§111.36. Definitions for Capitol Complex Parking Assignments.

Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Availability for assignment--Refers to the status of a lot or parking structure, either a part or the whole of which is used for open parking assignment and shows a utilization of its open parking areas of less than 100% during peak use hours.

(2) Handicap reserved parking--A parking space in a parking lot or parking structure to be utilized only by an employee issued a handicap parking permit by the parking administration. The spaces will be marked by signs and/or red painted curbs or stops.

(3) Occupying agency--Any state agency with a physical office or building space within the Capitol Complex.

(4) Open parking--The privilege to park anywhere within the Capitol Complex parking lots or parking structures except in those spaces marked as "reserved," "handicap reserved," "visitor parking," or designated by the board not to be open parking facilities. No monthly charge is made for open parking.

(5) Parking administration--A section of the Texas Department of Public Safety.

(6) Reserved parking--The assignment of a specific parking space to a state official, an agency or to an employee. The spaces will be marked by signs and/or yellow painted curbs or stops.

(7) Visitor parking--Parking space used by non-state employees and other visitors to the Capitol Complex. Visitor parking may be used by a state employee only if his or her principal place of employment is outside the Capitol Complex. The spaces will be marked by signs and/or blue painted curb stops. This definition excludes any parking spaces in the Capitol Visitors' Parking Garage.

§111.37. Carpools, ADA, and Fleet Parking.

(a) Car pools shall consist of at least three participating state employees working in the Capitol Complex, not having the same domicile, and who normally drive their vehicles to work.

(1) A newly established car pool, meeting the requirements of this section as determined by the parking administration, shall be assigned a free reserved space as near as possible to the building in which they work, provided this would not result in the dislocation of any employee having a previously-assigned reserved space.

(2) Responsibility for the car pool shall be given to a designated member of the car pool, whose identification as such shall be recorded in the parking records. Notice to the designated member for any purpose set out in these sections shall be deemed notice to all members of the car pool.

(3) Only one vehicle in each car pool shall be parked in state lots or parking structures. Should two members of the same car pool need to drive their vehicles, the driver of the second vehicle must notify parking administration immediately upon arrival.

(4) Assignment of a reserved space to a car pool shall result in the automatic forfeiture of any previous assignment to the members of the car pool. Subsequent departure of a car pool member or dissolution of the car pool itself will not restore any parking assignment previously forfeited by a member.

(5) Departure of a car pool member will not cause automatic forfeiture of the car pool assignment unless the membership falls below three members and a new member cannot be found within 60 days to restore the car pool to the minimum qualifying number.

(6) Dissolution of a car pool for any reason will not give the individual members any right to the priority space assigned to that car pool.

(b) Under the provisions of the Americans with Disabilities Act (ADA) and 29 Code of Federal Regulations Part 1630.2, a qualified employee with a disability will be authorized to park in a free handicap-designated parking space on a first come, first served basis.

(c) State Fleet Vehicles. Agencies housed in the Capitol Complex that have state owned or leased vehicles with exempt license plates will be provided a limited number of parking spaces in underutilized parking areas for a defined period of time. The number of fleet vehicles and the period of time each agency can store the vehicles in Capitol Complex parking lots and parking structures shall be determined through a Memorandum of Understanding between the board and each agency that has such fleet vehicles. State fleet vehicles:

(1) must be prominently marked as State-owned or operated by having the agency name and/or logo displayed on the sides of the vehicle;

(2) must have permanent exempt license plates; and

(3) will not be required to have a Capitol Complex parking identification sticker.

§111.38. Parking Assignments.

(a) The assignment to a reserved space or open facility is considered a privilege that can be revoked at any time for nonpayment or noncompliance with the parking regulations. In addition, this privilege may be revoked to permit implementation of changes in the parking system or these rules as mandated by the board. The acceptance and use of a parking assignment constitutes acceptance of all sections and rules regarding such assignment. The board may designate lots or parking structures for use by employees of particular buildings in order to give better distribution to parking utilization, subject to the priority of assignment established in Texas Government Code §411.063(c), and §111.39 of this title (relating to Priority of Parking Assignments).

(b) Each occupying agency will designate one of its employees to be the parking coordinator, and parking administration will provide each coordinator with detailed instructions for the proper administration of these rules.

(c) Employees of state agencies are eligible to park in an unrestricted parking lot or structure so long as they office four hours or more a day during the normal state work week between the hours of 7 a.m. and 6 p.m. within the Capitol Complex. Parking in unrestricted lots or structures shall be on a first come-first park basis.

(d) Employees, upon request, may be placed on a waiting list for an open parking assignment to a restricted parking lot or restricted parking structure in close proximity to their work location. They may be placed on the list for not more than two locations, applicable only to those lots or parking structures designated for use by the building where the applicant is employed. Utilization surveys of open parking areas will be conducted to determine the number of available spaces in all lots and parking structures. Such surveys will be conducted at times, and during months that have been observed by parking administration as typically having the largest number of vehicles using open parking. When utilization surveys show a pattern of available spaces in an open parking location, parking administration will make available a number of open parking assignments, after taking into consideration the pattern of utilization and the number of current assignments for the particular location. Eligible employees will be notified in writing. The employee will be given five working days in which to accept or decline the assignment. When notification letters have been mailed, employees are automatically removed from the waiting list for the lot or parking

structure designated in the notification letter. Once a parking assignment has been accepted by an employee, that employee is automatically removed from all waiting lists. New applications not immediately assignable shall be dated and time stamped as they are received by parking administration and placed on the respective lists in chronological order. Assignments from the waiting list will be made on a "first-on, first-off" basis, except as provided in subsection (e) of this section.

(e) Whenever a new restricted parking lot or restricted parking structure is opened for operation, assignments will be made as near as possible to the employee's work location. Whenever a new parking structure is opened that is connected to or part of a building, whether by new construction or by purchase of an existing facility, assignments to that location may be made first to the employees occupying the building. Additional and further assignments will be made in accordance with these sections.

(f) All assignments relinquished, cancelled, terminated, or forfeited shall become reassignable in accordance with these sections on the effective date of relinquishment, cancellation, termination, or forfeiture.

(g) Parking administration may designate and request the board or the Texas Department of Transportation to mark and place appropriate signs, traffic control devices, and meters for traffic control and parking regulation, and to designate parking spaces for state-owned vehicles and visitor parking in the Capitol Complex.

(h) In making assignments to open parking facilities, individual space assignments are not permitted. Parking administration may assign more individuals to park in the lot or parking structure than there are spaces available. Determination of the number of assignments to such an area, as allowed by this subsection, shall be based upon information obtained during peak utilization periods. Adjustments in the number of permitted assignments may be made from time to time as circumstances warrant in an effort to obtain full utilization of state parking facilities.

(i) Each state agency housed in the Capitol Complex or on other state property administered by parking administration is allotted a number of reserved spaces based on the needs of the agency and the availability of spaces. Parking administration will ensure that all agencies are allocated at least one space for individual assignment. Each state agency is responsible for assignment of these spaces and for notifying parking administration of all reserved assignments, additions, and deletions. A monthly charge shall be paid quarterly in advance for each assigned reserved space within a lot or parking structure as described in §111.43 of this title (relating to Monthly Parking Fees, Payment, and Refunds). All other spaces, whether a part or the whole of a lot or parking structure, shall be marked for open assignment in accordance with these sections.

(j) Parking administration may make space trades for employees currently having assigned spaces. In allowing such trades, parking administration shall satisfy itself that the best interests of the state will be served.

(k) If an employee is transferred to another work station outside the jurisdiction of parking administration or is terminated, he or she shall relinquish his or her assignment.

(l) In case of a transfer, should the employee be reassigned within six months of the original transfer, he or she shall be entitled to a priority assignment in the same facility as his or her relinquished assignment if a space is available.

(m) Subleasing an assignment shall not be permitted and is a violation of these sections. It is permissible for an employee who is assigned a reserved space by his or her agency to allow another state

employee to use that assignment during vacations, absences due to illness, or official travel, provided the parking coordinator for his or her agency is notified in advance, but charging a fee for this favor is a violation of these sections.

§111.39. Priority of Parking Assignments.

(a) When the legislature is in session, parking administration shall assign and have marked for unrestricted use by members and administrative staff of the legislature the reserved parking spaces in the Capitol Complex requested by the respective houses of the legislature. A request for parking spaces reserved pursuant to this subsection shall be limited to spaces in the Capitol area and the additional spaces in state parking lots proximately located to the Capitol.

(b) When the legislature is not in session, parking administration shall, at the request of the respective legislative bodies, assign and have marked the spaces requested for use by members and administrative staff of the legislature, in the areas described in subsection (a) of this section.

(c) The board may direct parking administration to assign parking spaces to elected state officials and appointed heads of state agencies who occupy space in state buildings located within the Capitol Complex.

(d) Parking administration will assign parking spaces to state employees with disabilities. See §111.37 of this title (relating to Carpools, ADA, and Fleet Parking). A state employee will be considered eligible for assignment to designated disabled parking areas or permanent assignment to a free reserved disabled person's parking space if the person holds a Texas Department of Transportation disabled person parking privilege issued by a county tax assessor-collector as described in Texas Transportation Code §681.002 or §681.003.

(e) If spaces are available, parking administration may assign parking spaces to car pools. See §111.37 of this title.

(f) Parking administration may assign an appropriate number of reserved parking spaces to state agencies housed in the Capitol Complex, or in other state facilities administered by the department whether or not located in the City of Austin.

(g) All remaining parking facilities under the charge and control of parking administration in the area described in subsection (f) of this section may be made available for use by state employees. Such employees shall be those working for agencies who occupy space in state buildings, located within the area specified in subsection (f) of this section.

(h) To implement the requirements of this section, the parking administration shall not be required to assign all of the spaces available. The parking administration by discretion may make use of any unassigned spaces designated under this section, so long as that use is in accordance with Texas Government Code, §§411.061 - 411.067, and these sections.

§111.40. Parking Permits.

(a) All vehicles utilizing open parking must display a current parking permit. Up to two permits may be issued to each employee, but only one vehicle bearing a permit issued to an employee may make use of that employee's parking privilege within the Capitol Complex at a time. Parking administration is authorized to issue either decal permits or hanging permits.

(1) Decal permits shall be applied to the vehicle according to instructions provided at the time of issuance.

(2) Hanging permits will normally be hung from the rearview mirror when the vehicle is parked in a state parking lot

or parking structure. If no mirror post is available, the permit may be taped to the front windshield, in the lower center, or otherwise displayed so that it is readily visible from outside the vehicle. If hanging permits are issued, one hanging permit will be issued to each eligible employee. The hanging permit will be issued for a vehicle with a specific license plate.

(b) An employee who is issued a permit will be responsible for any parking violations on vehicles bearing the permit.

(c) Employees with unpaid charges recorded in their name shall be ineligible to receive a parking permit while such charges remain unpaid.

(d) All permits will expire and be renewed on a biennial basis.

(e) Parking permits may be used only by the employee the permit is assigned to and may not be loaned or allowed to be used for any purpose other than for parking of a state employee's vehicle while the employee is at work within the Capitol Complex.

(f) Temporary parking permits may be issued for a period of one to 15 days. If the need for the permit continues to exist after 15 working days, a new temporary permit may be obtained in the parking administration office. An employee may only obtain a temporary permit for one vehicle at a time.

(g) Upon written request from the agency parking coordinator, a 90-day special permit or construction permit may be issued if spaces are available. Once approved, the permit must be displayed and the employee or the contractor who is issued the permit will be responsible for any parking violations on the vehicle.

§111.41. Parking and Traffic Control Devices.

The Department of Public Safety in coordination with the board shall administer official traffic control devices in the Capitol Complex.

(1) The Department of Public Safety shall cause to be placed and maintained all official traffic-control devices in accordance with the Texas Manual on Uniform Traffic-Control Devices for Streets and Highways, as most recently published by the Texas Department of Transportation, or in accordance with such official publication of that Department, which may in the future amend or supersede the same, except where such manual is in conflict with state law. It shall be unlawful for any person to violate the regulation imposed by any lawfully posted traffic-control device, whether or not posted in accordance with such manual.

(2) Proof of the fact that any traffic-control device, sign, signal or marking was actually in place at any location in the Capitol Complex shall constitute prima facie evidence that the same was installed under the authority of law.

(3) The Department of Public Safety shall maintain a record of the locations where any traffic-control device, marking or special regulation is made applicable.

(4) All traffic-control devices, signs, signals and markings evidenced by the record thereof maintained by the Department of Public Safety, and in existence as of the adoption of these amendments to the rules of the department, are hereby ratified and confirmed as official traffic-control devices of the department, and shall continue as such until modified as provided in this section.

(5) The Department of Public Safety shall approve any special regulations of traffic or parking applicable to a specific location when appropriate for the free flow and the expeditious handling of traffic, the safety of persons or property, or the use of buildings and property within the Capitol Complex. Such regulations shall be placed in the record, which shall include the description, location and date of



such regulation. Whenever any specific regulation of traffic becomes expressly not applicable to a specific location within the Capitol Complex, the record of such regulation shall be marked "deleted" by the commander of the Capitol Regional Command Office or his designee, who shall also note the date of such deletion.

(6) The record of traffic-control devices, signs, signals and markings shall be continuously maintained by the Department of Public Safety, and all persons shall be charged with notice of the contents of the same. Defects, omissions or entries of the records relating to traffic-control devices, signs, signals and markings shall not constitute a defense to prosecution for traffic or parking violations.

§111.42. Normal Duty Hours and Use of Parking Facilities After Work Hours.

(a) Assignments on surface lots or in garages shall allow the permitted employee to utilize the assignment only on state working days, including skeleton holidays, during the hours of 7 a.m. through 6 p.m.

(b) The board may authorize use of state parking areas outside of normal working hours for other purposes, to the extent such parking areas are not controlled by another state agency.

§111.43. Monthly Parking Fees, Payment, and Refunds.

(a) Fees. A monthly charge for assigned parking will be at the rate set by the state legislature, or if no rate is set, at a rate set by the board. The board sets the rate at \$10 per reserved space per month.

(b) Payment. Monthly charges shall be paid quarterly in advance, due on the first day of September, December, March, and June. The payment is considered delinquent on the 10th of the month, at which time a notice is sent to the agency advising the agency to remit payment within five working days of the date of notice.

(c) All agencies must remit payment for spaces or be subject to the loss of the privilege of the reserved parking space(s).

§111.44. Parking Violations.

(a) The following acts, when committed within the Capitol Complex shall constitute parking violations that may be enforced by the Department of Public Safety:

(1) parking overtime in a space which is limited in time by meters or signs, or parking overtime in a loading zone;

(2) moving a barricade or parking within any barricaded area;

(3) parking on any lawn, curb, sidewalk, or any area which creates an obstruction to vehicular or pedestrian traffic;

(4) parking in a marked "No Parking" area;

(5) parking within 15 feet of a fire plug or within a fire zone;

(6) failing to park within a lined parking space. Vehicles shall be parked within the boundaries of the designated lined spaces. The fact that other vehicles are parked improperly shall not constitute an excuse for parking with any part of the vehicle over the line;

(7) parking in a loading zone except while loading or unloading;

(8) parking over 18 inches from the curb or parking stop, measured from any part of the car body facing the curb or parking stop;

(9) parking with the rear of the vehicle facing the curb or parking stop unless in designated "Back in Parking" zones;

(10) parking in a space or facility other than the one assigned, unless authorization has been obtained;

(11) parking in a designated parking area without displaying proper permit;

(12) parking upon any unmarked or unimproved area which has not been designated for parking;

(13) double-parking on the roadway side of a vehicle stopped or parked at the edge or curb of a street;

(14) parking in a handicapped space without displaying a proper permit;

(15) possession or use of a lost/stolen or forged permit;

(16) possession or use of a current permit that has been defaced or altered;

(17) oversized vehicle in a stall marked for small or compact vehicles;

(18) blocking or impeding a crosswalk, driveway, or alley;

(19) parking in a state parking facility by an employee who has lost his/her parking privileges due to forfeiture;

(20) parking on a public street within the Capitol Complex of a vehicle which is owned or operated by a state employee who has been issued a current parking permit which authorizes parking in a lot or garage within the Capitol Complex;

(21) parking in a parking space designated for visitors to the Capitol Complex, when the vehicle is owned or operated by a state employee whose principal place of employment is within the Capitol Complex;

(22) removing, or moving a vehicle to which is attached, an immobilization device which was placed on the vehicle under 37 TAC §3.173(f) (relating to Impoundment and Immobilization of Vehicles). If damage results to the immobilization device, such a violation will be prosecuted under the applicable provisions of the Penal Code;

(23) displaying a handicapped permit issued to another person; or

(24) permitting a person, other than the state employee to whom the permit is assigned, to use a parking permit for a purpose other than state employee parking. (A parking administration officer shall remove parking permits from these vehicles and seize any hang tag permits found in violation of this section).

(b) The following shall constitute other traffic violations for which the penalty shall be a fine set by a court in accordance with applicable law:

(1) speeding, i.e., operating a motor vehicle on state property in excess of 15 miles per hour;

(2) violation of a provision contained within subsection (a) of this section; or

(3) other violations of Texas Transportation Code Chapters 541-600.

§111.45. Sick Leave Pool.

A sick leave pool is established to provide for the alleviation of hardship caused to an employee and the employee's family if a catastrophic illness or injury forces the employee to exhaust all leave time earned by that employee and to lose compensation from the state.

(1) The senior staff services officer is designated as the pool administrator.

(2) The pool administrator, with the advice and consent of the executive director, will establish operating procedures consistent

with the requirements of this section and relevant law governing operation of the pool.

(3) Donations to the pool must be made by written request containing a certification that the donation is strictly voluntary.

§111.46. Bid Procedures.

The board adopts by reference the Comptroller of Public Accounts rule for Bid Submission, Bid Opening, and Tabulation. The rule being adopted by reference has been published as 34 TAC §20.35.

§111.47. Negotiation and Mediation of Certain Contract Disputes.

The board adopts by reference the rules of the Office of the Attorney General in Texas Administrative Code, Title 1, Part 3, Chapter 68 relating to Negotiation and Mediation of Certain Contract Disputes to comply with the requirements of Government Code, Chapter 2260, §2260.052(c). The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of the contract's complexity, subject matter, dollar amount, or method and time of performance.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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John Sneed

Executive Director

State Preservation Board

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For further information, please call: (512) 463-6271



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

##### SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

###### 19 TAC §4.28, §4.32

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §4.28 and §4.32 concerning transfer of core curriculum courses and transfer of field of study courses. The intent of the amendments is to clarify that transfer of core curriculum courses and field of study courses is a mandatory substitution for courses required for the core curriculum or the field of study curriculum at a receiving institution.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rule listed above.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of trans-

ferability of core curriculum and field of study curriculum. There are no significant economic costs anticipated to persons and institutions who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.827, which provides the Coordinating Board with the authority to adopt rules to administer the section.

The amendments affect the implementation of Texas Education Code, §§61.821-61.833.

§4.28. Core Curriculum.

(a) - (b) (No change.)

(c) Transfer of Credit--Completed Core Curriculum. If a student successfully completes the 42 semester credit hour core curriculum at a Texas public institution of higher education, that block of courses [~~may be transferred to any other Texas public institution of higher education and~~] must be substituted in transfer to any other Texas public institution of higher education for the receiving institution's core curriculum. A student shall receive academic credit for each of the courses transferred and may not be required to take additional core curriculum courses at the receiving institution.

(d) (No change.)

(e) Transfer of Credit--Core Curriculum Not Completed. Except as specified in subsection (f) of this section, a student who transfers from one institution of higher education to another without completing the core curriculum of the sending institution must [shall] receive academic credit within the core curriculum of the receiving institution for each of the courses that the student has successfully completed in the core curriculum of the sending institution. Following receipt of credit for these courses, the student may be required to satisfy the remaining course requirements in the core curriculum of the receiving institution.

(f) - (k) (No change.)

§4.32. Field of Study Curricula.

(a) (No change.)

(b) If a student successfully completes a field of study curriculum developed by the Board, that block of courses [~~may be transferred to a general academic teaching institution and~~] must be substituted in transfer to a general academic teaching institution for that institution's lower-division requirements for the degree program for the field of study into which the student transfers, and the student must [shall] receive full academic credit toward the degree program for the block of courses transferred.

(c) A student who transfers from one institution of higher education to another without completing the field of study curriculum of the sending institution must [shall] receive academic credit in the field of study curriculum of the receiving institution for each of the courses that the student has successfully completed in the field of study curriculum of the sending institution. Following receipt of credit for these courses, the student may be required to satisfy the remaining course requirements in the field of study curriculum of the receiving institution, or to complete additional requirements in the receiving institution's program, as long as those requirements do not duplicate course content already completed through the field of study curriculum.

(d) - (f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



## SUBCHAPTER S. APPROVAL FOR PARTICIPATION IN THE STATE AUTHORIZATION RECIPROCITY AGREEMENT (SARA) FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION

### 19 TAC §§4.310 - 4.317

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§4.310 - 4.317 concerning participation in the State Authorization Reciprocity Agreement (SARA). The intent of these new sections is to establish the Coordinating Board as the state agency tasked with overseeing state participation in SARA. Participation in SARA will allow Texas public institutions to offer distance education courses and programs in other SARA participating states for a flat annual fee. As the portal agency, Coordinating Board staff would serve as the point of contact for all other SARA states, evaluate SARA applications from Texas institutions to determine eligibility, serve as the initial contact for complaints about Texas institutions that participate in SARA, provide data and reports as requested by SARA, perform annual reviews of all Texas institutions participating in SARA. Texas institutions have shown interest and pledged support for participation in SARA.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rule listed above.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be a savings in time and money for state institutions that participate in state authorizations. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us) comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, §61.05121, which provides the Coordinating Board with the authority to adopt rules to administer the section.

The new sections affect the implementation of Texas Education Code, §61.05121.

### §4.310. Purpose.

The purpose of this subchapter is to establish the coordinating board's oversight for public institutions of higher education regarding participation in State Authorization Reciprocity Agreements.

### §4.311. Authority.

Authority for this subchapter is provided by Texas Education Code §61.05121, which provides the board with the authority to administer state participation in State Authorization Reciprocity Agreements.

### §4.312. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accredited--Holding institutional accreditation by name as a U.S.-based institution from an accreditor recognized by the U.S. Department of Education.

(2) Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(3) Commissioner--Commissioner of Higher Education.

(4) C-RAC Guidelines--Refers to the *Interregional Guidelines for the Evaluation of Distance Education Programs (Online Learning)* for best practices in postsecondary distance education developed by leading practitioners of distance education and adopted by the Council of Regional Accrediting Commissions (C-RAC).

(5) Distance Education--Instruction offered by any means where the student and faculty member are in separate physical locations. It includes, but is not limited to, online, interactive video or correspondence courses or programs.

(6) Home State--A member state where the institution holds its legal domicile. To operate under SARA an institution must have a single home state.

(7) Host State--A member state in which an institution operates under the terms of this agreement, other than the home state.

(8) Institution--A degree-granting postsecondary entity.

(9) Member State--Any state, district or territory that has joined SARA.

(10) NC SARA--National Council for State Authorization Reciprocity Agreements.

(11) SARA--State Authorization Reciprocity Agreement is an agreement among its member states, districts and U.S. territories that establishes comparable national standards for interstate offering of postsecondary distance education courses and programs.

(12) SREB--Southern Regional Education Board

### §4.313. Eligibility Criteria.

(a) Any public degree granting institution of higher education may apply to participate in SARA if its principle campus is located in Texas.

(b) All distance education content provided by SARA participants must originate in the United States or a U.S. territory.

(c) The institution must be accredited by an accrediting body recognized by the U.S. Department of Education.

### §4.314. Admission to SARA.

All eligible institutions may apply to the Coordinating Board for admission to SARA under the signature of the institution's chief academic

officer. Coordinating Board staff will review the application and make a determination to approve or deny the request to participate in SARA. Within the application, an institution shall make assurances that it:

(1) Agrees to abide by the C-RAC Guidelines for the Evaluation of Distance Education.

(2) Agrees to be responsible for the actions of any third-party providers used by the institution to engage in operations under SARA.

(3) Agrees to notify the board of any negative changes to its accreditation status.

(4) Agrees to provide data requested by the board.

(5) Agrees to cooperate with the board in the investigation of any complaints arising from the students it serves in other states through SARA and to abide by investigating authority's resolution of any such complaint.

(6) All complaints must follow the institution's customary resolution procedure prior to being referred to the Coordinating Board. Grade appeals and student conduct appeals will be resolved at the institutional level without further appeal through SARA.

(7) Agrees to notify all students in a course or program that customarily leads to professional licensure, or which a student could reasonably believe leads to such licensure, whether or not the course or program meets requirements for licensure in the state where the student resides. If an institution does not know whether the course or program meets licensure requirements in the student's state of residence, the institution may meet this SARA requirement by informing the student in writing and providing the student the contact information for the appropriate state licensing board(s). An email dedicated solely to this purpose and sent to the student's best known email address meets this requirement.

(8) Agrees, in cases where the institution cannot fully deliver the instruction for which a student has contracted, to provide a reasonable alternative for delivering the instruction or reasonable financial compensation for the education the student did not receive.

(9) Agrees to pay an annual fee to NC-SARA. This fee replaces any state fees that the institution would normally pay to other SARA member states. If an institution offers distance education to students in non-SARA participating states, it must pay required state fees.

(10) If institutional membership is denied, the board will provide a written reason for denial. The institution may reapply at any time, having corrected any deficiencies, or may appeal the denial to the SARA director of SREB. If the denial is upheld by SREB, the institution may appeal to NC-SARA.

#### §4.315. Maintaining Eligibility.

To remain eligible for participation in SARA, an institution must renew its participation agreement with the board and pay its required SARA fees annually. At the time of renewal, board staff will determine whether the institution still meets SARA requirements. An institution may be removed at any time by the board for violation of SARA standards.

#### §4.316. Complaint Resolution.

Institutions operating under SARA shall make their resolution policies and procedures readily available to students taking courses under SARA provisions.

(1) Complaints against an institution operating under SARA must first go through the institution's own procedures for resolution grievances.

(2) If a person bringing a complaint is not satisfied with the outcome of the institutional process for handling complaints, the complainant may appeal, within two years of the incident, to the board.

(3) Coordinating Board staff will review the appeal, determine a resolution to the appeal, and notify the complainant and the institution of the decision.

#### §4.317. Out-of-state SARA Participants.

The board shall serve as point of contact for all other SARA states. If a public out-of-state SARA participant provides courses in Texas and is in apparent violation of the SARA agreement or with Texas Education Code or Administration Code, the board shall take appropriate action to terminate the institution's operation within Texas.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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## CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS SUBCHAPTER F. PLANNING AND PARTNERSHIP GRANTS FOR GRADUATE MEDICAL EDUCATION

### **19 TAC §§6.105, 6.107, 6.108**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§6.105, 6.107(3), 6.107(6), 6.107(7), 6.107(9), and 6.108(a) concerning the definition of terms and eligibility for support under the planning grant program for graduate medical education. The intent of the amendments is to make the following changes required by Senate Bill (SB) 18, 2015, 84th Texas Legislature, Regular Session: (a) rename the program to include a reference to the partnership aspect of the program, (b) broaden the categories of entities eligible to apply for support under the grant program, and (c) add and clarify definitions of certain eligible entities.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rule listed above.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the expansion of the types of entities eligible to apply for Planning Grants for Graduate Medical Education. There are no significant economic costs anticipated to persons and institutions who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas,

78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 58A, Subchapter B, §58A.021, which provides the Coordinating Board with the authority to adopt rules to administer the section.

The amendments affect the implementation of Texas Education Code, §58A.022.

*§6.105. Purpose.*

The purpose of this subchapter is to implement rules regarding awards for Graduate Medical Education Planning and Partnership Grants.

*§6.107. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education.

(3) Community-based, Ambulatory Patient Care Center-- Includes:

(A) a federally qualified health center, as defined by §1905(1)(2)(B), Social Security Act (42 U.S.C. §1396d(1)(2)(B));

(B) a community mental health center, as defined by §1861(ff)(3)(B), Social Security Act (42 U.S.C. §1395x(ff)(3)(B));

(C) a rural health clinic, as defined by §1861(aa)(2), Social Security Act (42 U.S.C. §1395x(aa)(2)); and

(D) a teaching health center, as defined by 42 U.S.C. §2931-1(f)(3)(A).

(4) [(3)] First-Year Residency Position--A position filled by a physician that is entering into residency training for the first time.

(5) [(4)] Graduate-Year Level--A resident's current year of accredited graduate medical education. Graduate-Year Level is also referred to as "postgraduate year" or "PGY."

(6) [(5)] Graduate Medical Education Program--A nationally-accredited post-doctor of medicine (M.D.) or doctor of osteopathic medicine (D.O.) program that prepares physicians for the independent practice of medicine in a specific specialty area, also referred to as residency training.

(7) [(6)] Hospital--[~~A Texas health care facility, including a hospital, ambulatory surgical center, public health clinic, birthing center, outpatient clinic, or community health center. This includes a hospital owned, maintained, or operated by the state, but does not include a facility that is owned, maintained, or operated by the federal government or an agency of the federal government.~~]

(A) a facility licensed as a hospital under Chapter 241, Health and Safety Code, or as a mental hospital under Chapter 577, Health and Safety Code; or

(B) a similar facility owned or operated by this state or an agency of this state.

(8) [(7)] Medical School--A Texas public or independent medical institution that awards the doctor of medicine (M.D.) or doctor of osteopathic medicine (D.O.) degree[; as defined in Texas Education Code, §61.003(5) or §61.501(4)].

(9) [(8)] Request for Applications--The full text of the administrative regulations, budget guidelines, reporting requirements, and other standards of accountability for this program.

(10) [(9)] Applicant--An entity eligible to apply for a Graduate Medical Education Planning and Partnership Grant.

*§6.108. Eligibility.*

(a) The following entities located in the state are eligible to apply for support under the Planning and Partnership Grant Program:

(1) a hospital [that is eligible for Medicare funding of graduate medical education (GME) and does not operate a GME program]; or

(2) a medical school; or [an entity that is currently partnered with, or will partner with, a hospital that does not operate a GME program and is eligible for Medicare funding of GME-]

(3) a community-based, ambulatory patient care center.

(b) A grant under this subchapter must be used for the purpose of planning a GME program that includes first-year residency positions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



## CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS

### SUBCHAPTER B. APPROVAL FOR PARTICIPATION IN THE STATE AUTHORIZATION RECIPROCITY AGREEMENT (SARA) FOR PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION AND PRIVATE POST-SECONDARY EDUCATIONAL INSTITUTIONS

#### 19 TAC §§7.50 - 7.57

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§7.50 - 7.57 concerning participation in the State Authorization Reciprocity Agreement (SARA). The intent of these new sections are to establish the Coordinating Board as the state agency tasked with overseeing state participation in SARA. Participation in SARA will allow Texas private and independent institutions to offer distance education courses and programs in other SARA participating states for a flat annual fee. As the portal agency, Coordinating Board staff would serve as the point of contact for all other SARA states, evaluate SARA applications from Texas institutions to determine eligibility, serve as the initial contact for complaints about Texas institutions that participate in SARA, provide data and reports as requested by SARA, perform annual reviews of all Texas

institutions participating in SARA. Texas institutions have shown interest and pledged support for participation in SARA.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of these new sections.

Dr. Peebles has also determined that for the first five years the new sections are in effect, the public benefits anticipated as a result of administering the sections will be a savings in time and money for state institutions that participate in state authorizations. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us) comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, §61.05121, which provides the Coordinating Board with the authority to adopt rules to administer the section.

The new sections affect the implementation of Texas Education Code, §61.05121.

#### §7.50. Purpose.

The purpose of this subchapter is to establish the coordinating board's oversight for private or independent institutions of higher education and private postsecondary educational institutions regarding participation in State Authorization Reciprocity Agreements.

#### §7.51. Authority.

Authority for this subchapter is provided by Texas Education Code §61.05121, which provides the Board with the authority to administer state participation in State Authorization Reciprocity Agreements.

#### §7.52. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accredited--Holding institutional accreditation by name as a U.S.-based institution from an accreditor recognized by the U.S. Department of Education.

(2) Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(3) Commissioner--Commissioner of Higher Education.

(4) C-RAC Guidelines--Refers to the *Interregional Guidelines for the Evaluation of Distance Education Programs (Online Learning)* for best practices in postsecondary distance education developed by leading practitioners of distance education and adopted by the Council of Regional Accrediting Commissions (C-RAC).

(5) Distance Education--Instruction offered by any means where the student and faculty member are in separate physical locations. It includes, but is not limited to, online, interactive video or correspondence courses or programs.

(6) Home State--A member state where the institution holds its legal domicile. To operate under SARA an institution must have a single home state.

(7) Host State--A member state in which an institution operates under the terms of this agreement, other than the home state.

(8) Institution--A degree-granting postsecondary entity.

(9) Member State--Any state, district or territory that has joined SARA.

(10) NC SARA--National Council for State Authorization Reciprocity Agreements.

(11) SARA--State Authorization Reciprocity Agreement is an agreement among its member states, districts and U.S. territories that establishes comparable national standards for interstate offering of postsecondary distance education courses and programs.

(12) SREB--Southern Regional Education Board

#### §7.53. Eligibility Criteria.

(a) Any private or independent degree granting institution of higher education or private postsecondary educational institutions may apply to participate in SARA if its principle campus located in Texas.

(b) All distance education content provided by SARA participants must originate in the United States or a U.S. territory.

(c) The institution must be accredited by an accrediting body recognized by the U.S. Department of Education and the Coordinating Board.

#### §7.54. Admission to SARA.

All eligible institutions may apply to the Coordinating Board for admission to SARA under the signature of the institution's chief academic officer. Coordinating Board staff will review the application and make a determination to approve or deny the request to participate in SARA. Within the application, an institution shall make assurances that it:

(1) Agrees to abide by the C-RAC Guidelines for the Evaluation of Distance Education.

(2) Agrees to be responsible for the actions of any third-party providers used by the institution to engage in operations under SARA.

(3) Agrees to notify the board of any negative changes to its accreditation status.

(4) Agrees to provide data requested by the board.

(5) Agrees to cooperate with the board in the investigation of any complaints arising from the students its serves in other states through SARA and to abide by investigating authority's resolution of any such complaint.

(6) All complaints must follow the institution's customary resolution procedure prior to being referred to the Coordinating Board. Grade appeals and student conduct appeals will be resolved at the institutional level without further appeal through SARA.

(7) Agrees to notify all students in a course or program that customarily leads to professional licensure, or which a student could reasonably believe leads to such licensure, whether or not the course or program meets requirements for licensure in the state where the student resides. If an institution does not know whether the course or program meets licensure requirements in the student's state of residence, the institution may meet this SARA requirement by informing the student in writing and providing the student the contact information for the appropriate state licensing board(s). An email dedicated solely to this purpose and sent to the student's best known email address meets this requirement.

(8) Agrees, in cases where the institution cannot fully deliver the instruction for which a student has contracted, to provide a reasonable alternative for delivering the instruction or reasonable financial compensation for the education the student did not receive.

(9) If approved, the institution must pay an annual fee to NC-SARA. This fee replaces any state fees that the institution would normally pay to other SARA member states. If an institution offers distance education to students in non-SARA participating states, it must pay required state fees.

(10) If institutional membership is denied, the board will provide a written reason for denial. The institution may reapply at any time, having corrected any deficiencies, or may appeal the denial to the SARA director of SREB. If the denial is upheld by SREB, the institution may appeal to NC-SARA.

§7.55. Maintaining Eligibility.

To remain eligible for participation in SARA, an institution must renew its participation agreement with the board and pay its required SARA fees annually. At the time of renewal, board staff will determine whether the institution still meets SARA requirements. An institution may be removed at any time by the board for violation of SARA standards.

§7.56. Complaint Resolution.

Institutions operating under SARA shall make their resolution policies and procedures readily available to students taking courses under SARA provisions.

(1) Complaints against an institution operating under SARA must first go through the institution's own procedures for resolution grievances.

(2) If a person bringing a complaint is not satisfied with the outcome of the institutional process for handling complaints, the complainant may appeal, within two years of the incident, to the board.

(3) Coordinating Board staff will review the appeal, determine a resolution to the appeal, and notify the complainant and the institution of the decision.

§7.57. Out-of-state SARA Participants

(a) The board shall serve as point of contact for all other SARA states.

(b) If a private or independent out-of-state SARA participant provides courses in Texas and is in apparent violation of the SARA agreement or with Texas Education Code or Administration Code, the board shall take appropriate action to terminate the institution's operation within Texas.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



CHAPTER 9. PROGRAM DEVELOPMENT IN  
PUBLIC TWO-YEAR COLLEGES  
SUBCHAPTER L. MULTIDISCIPLINARY  
STUDIES ASSOCIATE DEGREES

19 TAC §§9.550 - 9.555

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§9.550 - 9.555 concerning administration of multidisciplinary studies associate degrees at public community colleges. The intent of the new rules is to provide guidance concerning the administration of multidisciplinary studies associate degrees at public community colleges as required by Senate Bill 1189, 84th Legislature, Regular Session. The rules define the course requirements of a multidisciplinary studies associate degree and outlines how students enrolled in these programs must be advised on the required courses to complete the degree program after completing a cumulative total of 30 semester credit hours. The new rules will effect students enrolling in multidisciplinary studies associate degrees at public community colleges effective the 2016 fall semester.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules listed above.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of course completion requirements to complete an academic associate degree at a public community college. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at [AQWcomments@thehb.state.tx.us](mailto:AQWcomments@thehb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 130, §130.0104, which provides the Coordinating Board with the authority to adopt rules to administer the section.

The new sections affect the implementation of Texas Education Code, Chapter 130.

§9.550. Purpose.

The purpose of this subchapter is to establish the Coordinating Board's oversight for public community colleges regarding Multidisciplinary Studies Associate Degrees.

§9.551. Authority.

Authority for this subchapter is provided by Texas Education Code, §130.0104, which provides the board with the authority to administer Multidisciplinary Studies Associate Degrees.

§9.552. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(2) Core Curriculum--Has the meaning as defined by §4.28 of this title (relating to Transfer of Credit, Core Curriculum and Field of Study Curricula).

(3) Degree Plan--The meaning as defined in Texas Education Code, §51.9685(a)(1).

(4) Four-year College or University--A degree-granting postsecondary institution as define in Texas Education Code, §61.003.

(5) Multidisciplinary Studies Associate Degree Program--A Coordinating Board approved associate of arts or associate of science degree composed of the college's core curriculum and enough additional courses to equal 60 semester credit hours (SCH). The SCH beyond the core curriculum must be selected by the student, in consultation with an academic advisor, and transfer to a specific field of study or major at a university of the student's choice.

(6) Public Community College--The meaning as defined in Texas Education Code, §61.003.

*§9.553. Multidisciplinary Studies Associate Degree Program.*

A multidisciplinary studies associate degree program established at a junior college under this section must require a student to successfully complete:

(1) The junior college's core curriculum adopted under Texas Education Code, Texas Education Code §61.822(b); and

(2) After completion of the core curriculum under paragraph (1) of this subsection, the courses selected by the student in the student's completed degree plan accounts for all remaining credit hours required for the completion of the degree program; and

(3) Emphasizes the student's transition to a particular four-year college or university that the student chooses; and prepare for the student's intended field of study or major at the four-year college or university.

*§9.554. Adoption of Program.*

The governing board of each public junior college district shall establish a multidisciplinary studies associate degree program which meets the requirements of this subchapter at each junior college in the district

*§9.555. Student Advising.*

Notwithstanding Texas Education Code §51.9685, before the beginning of the regular semester or term immediately following the semester or term in which a student successfully completes a cumulative total of 30 or more semester credit hours for coursework in a multidisciplinary studies associate degree program established under this section, the student must meet with an academic advisor to complete a degree plan, as defined by §9.553 of this title (relating to Multidisciplinary Studies Associate Degree Program), that:

(1) Accounts for all remaining credit hours required for the completion of the degree program; and

(2) Emphasizes the student's transition to a particular four-year college or university that the student chooses; and

(3) Preparations for the student's intended field of study or major at the four-year college or university.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bill Franz

General Counsel

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## CHAPTER 13. FINANCIAL PLANNING

## SUBCHAPTER G. RESEARCH DEVELOPMENT FUND

### 19 TAC §§13.121 - 13.127

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§13.121 - 13.127 concerning standards and accounting methods for determining restricted research expenditures. The intent of the amendments is to (a) rename the Subchapter to Restricted Research Expenditures, (b) make text and name changes required by House Bill (HB) 1000, 84th Texas Legislature, Regular Session, and (c) implement changes to the standards and accounting methods for restricted research expenditures in response to a State Auditor's Office (SAO) audit with SAO Report No. 12-038, June 2012.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending these sections.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of how restricted research expenditures are accounted. There are no significant economic costs anticipated to persons and institutions who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 62, Subchapter E, §62.096, which authorized the Coordinating Board to prescribe standards and accounting methods for determining the amount of restricted research funds expended.

The amendments affect the implementation of Texas Education Code, §§62.091-62.098.

*§13.121. Authority.*

Texas Education Code, §62.091, establishes the Texas Comprehensive Research [Development] Fund and Texas Education Code, §62.131, establishes the Core Research Support Fund to promote increased research capacity at eligible general academic teaching institutions. Texas Education Code, §62.096, authorizes the Coordinating Board, with the assistance of a [an advisory] committee, to prescribe standards and accounting methods for determining the amount of restricted research funds expended by an eligible institution in a state fiscal year and to consider appeals.

*§13.122. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

[(1) Advisory Committee--The Coordinating Board's Restricted Research Advisory Committee.]

(1) [(2)] Coordinating Board or Board [or Coordinating Board]--The Texas Higher Education Coordinating Board.

(2) [(3)] Clinical Trial Agreement--An externally sponsored agreement for the administration of a specifically mandated



patient protocol (sometimes in multiple clinical sites involving other institutions), in which some costs typically are paid from patient charges or other sources.

(3) [(4)] Commissioner--Commissioner of Higher Education.

(4) [(5)] Comptroller--The Texas Comptroller of Public Accounts.

(5) Core Research Support Fund (CRSF)--A funding mechanism established to promote increased research capacity at emerging research universities under Texas Education Code, §§62.131 - 62.137.

(6) - (7) (No change.)

[(8) Eligible Institution--A general academic teaching institution, as defined by Texas Education Code, §61.003, other than The University of Texas at Austin and Texas A&M University. Prairie View A&M University (PVAMU) is eligible to participate in the RDF if the university is not eligible for an appropriation from the Texas Competitive Knowledge Fund. In addition, for the state fiscal biennium ending August 31, 2017, PVAMU is eligible only if appropriations for the RDF over the state fiscal biennium for institutions that received distributions from the fund during the preceding biennium is at a level not less than the total amount of money that was appropriated for distributions to those eligible institutions in the preceding biennium.]

(8) [(9)] Indirect Costs--Costs incurred for certain overhead related to administering a particular sponsored project, an instructional activity, or any other institutional activity. Indirect costs are synonymous with "facilities and administrative (F&A) costs."

(9) [(10)] Industrial Collaboration Agreements--Agreements with universities, colleges, centers, or institutes under which funds are provided for collaborative R&D activities. The activity must be sponsored by private philanthropic organizations and foundations, for-profit businesses, or individuals.

(10) [(11)] Multiple Function Awards--Awards that have multiple goals, such as research, instruction, and public service.

(11) [(12)] Other Sponsored Activities--Programs and projects financed by Federal and non-federal agencies and organizations may be R&D for RDF restricted research under certain conditions:

(A) travel grants, only if in sole support of research activities;

(B) support for conferences or seminars, only if in sole support of research activities;

(C) support for projects pertaining to library collections, acquisitions, bibliographies or cataloging, only if their purpose is primarily for documented research activities; and

(D) programs to enhance institutional resources, including computer enhancements, etc., only if their purpose is primarily for documented research activities.

(12) [(13)] Pass-through to sub-recipient [Pass-throughs to Sub-recipients]--External award funds that are passed from one entity to a sub-recipient. The sub-recipient expends the award funds on behalf of or in connection with the pass-through entity.

(13) [(14)] Research--A systematic study directed toward fuller scientific knowledge or understanding of the subject studied.

(14) [(15)] Research and Development (R&D)--All research activities, both basic and applied, and all development activities

that are supported at universities, colleges, and other non-profit institutions.

[(16) Research Development Fund (RDF)--A method of allocating funds based on institutional restricted research expenditures and established outside the state treasury to promote increased research capacity at eligible general academic teaching institutions under Texas Education Code, §§62.091 - 62.098.]

(15) [(17)] Restricted Funds--Funds for which some external agency, business entity, individual, or organization has placed limitations on the uses for which the funds may be spent.

(16) [(18)] Restricted Gifts for R&D--A gift provided by an external entity (a foundation, a business, or an individual) for a specific purpose and for which:

(A) there is documented evidence that the gift is restricted for research, such as a donor's restriction for research; or

(B) there is separate evidence that the gift is restricted for research through:

(i) documentation by the donor that the gift is restricted (e.g., endowed chair, fellowship); and

(ii) more than half of the earnings are budgeted for research through the institutional accounting process.

(17) Restricted Research Committee or Committee--The Coordinating Board's Restricted Research Committee.

(18) [(19)] Restricted Research Expenditure--An expenditure of funds which an external entity has placed limitations on (Restricted Funds) and for which the use of the funds qualifies as research and development.

(19) [(20)] Sponsored Instruction and Training--Specific instructional or training activity established by grant, contract, or cooperative agreement with federal, state, or local government agencies; private philanthropic organizations and foundations; for-profit businesses; or individuals. Sponsored Instruction and Training may be R&D for [RDF] restricted research under certain conditions:

(A) curriculum development projects if the primary purpose of the project is developing and testing an instructional or educational model through appropriate research methodologies (i.e., data collection, evaluation, dissemination, and publication); or

(B) activities involving the training of individuals in R&D techniques, commonly called R&D training, if such activities utilize the same facilities as other R&D activities and if such activities are not included in the instruction function. Such activities include dissertation work associated with an R&D project.

(20) Sources and Uses template--An annual survey of Texas general academic and health-related institutions to detail financial information and provide specific information about revenues and expenditures.

(21) Sponsored Research and Development (Sponsored R&D)--Activity funded by grants, gifts, and/or contracts, including sponsored research contracts, that are externally awarded funds designated by the sponsor as primarily for R&D purposes. The activity must be sponsored by federal, state, or local governmental agencies; private philanthropic organizations and foundations; for-profit businesses; or individuals. Sponsored R&D includes:

(A) awards to university faculty to support R&D activities;

(B) competitively awarded grants and contracts funded by state appropriations specifically identified by the legislature as for research, but not state appropriations made directly to the institution for R&D through formula or special item funding;

(C) external faculty "career awards" to support the R&D efforts of the faculty;

(D) external funding to maintain facilities or equipment and/or operation of a center or facility that will be used for R&D

(E) external support for the writing of books when the purpose of the writing is to publish R&D results;

(F) the research portion of expenditures in the federal work-study program, in accordance with instructions for preparing the annual financial report that is submitted by an institution to the Comptroller after each fiscal year ends;

(G) industrial collaboration agreements with universities, colleges, centers, or institutes may qualify as R&D if at least half of the funds are explicitly designated as research support;

(H) clinical trial agreements in which data collection and analysis are the primary components of the institution's role in the trial, excluding costs of data collection and analysis performed by other institutions under subcontract and excluding costs that are covered by patient charges or similar sources; and

(I) demonstration projects may be R&D only if they include a new R&D component that is at least one-half of the scope of the project.

(22) Texas Comprehensive Research Fund (TCRF)--A funding mechanism established to promote increased research capacity at eligible general academic institutions that are neither research universities nor emerging research institutions under Texas Education Code, §§62.091 - 62.098.

*§13.123. Restricted Research [Advisory] Committee.*

The Commissioner shall convene ~~[appoint]~~, on an as needed basis, a ~~[an advisory]~~ committee to review and recommend changes to standards and accounting methods for determining restricted research expenditures and to consider appeals under §13.125 of this title (relating to Report on Restricted Research Awards).

(1) The ~~[advisory]~~ committee shall consist of representatives from ~~[eligible]~~ higher education institutions eligible for either TCRF or CRSF.

(2) Presidents of institutions eligible for either TCRF or CRSF shall designate members for the Restricted Research Committee. ~~[The Commissioner shall select institutions that represent both system institutions and institutions that are not in systems; including institutions that provide diversity in size, mission, and geographic distribution for membership on the advisory committee]~~

*§13.124. Standards and Accounting Methods for Determining Restricted Research Expenditures.*

(a) Only expenditures from restricted research awards made from the following types of projects and activities and sponsored by federal, state, or local governmental agencies; private philanthropic organizations and foundations; industry associations, for-profit businesses; or individuals shall be classified as restricted research expenditures:

(1) - (4) (No change.)

(5) Pass-through funds as defined in §13.122 of this title (relating to Definitions), that are to entities other than ~~[RDF-eligible]~~ institutions eligible for either TCRF or CRSF.

(6) Multiple Function Awards, as defined in §13.122 of this title if the scope or activities of the restricted awards include R&D, these are subject to the following limitation: if the purpose of a restricted award is primarily (more than 50 percent) research, then all expenditures, unless prohibited in §13.126 of this title (relating to Reporting of Restricted Research Expenditures), made from that award qualify as restricted research expenditures. If the purpose of the restricted award is not primarily research (less than 50 percent), then none of the expenditures may be counted as restricted research. Primary purpose will normally be demonstrated by more than half of the funds having been budgeted for research, but may be demonstrated by the sponsor's statement of purpose or other documented evidence.

(b) Institutions shall document the process for determining restricted research awards and shall maintain documentation justifying the rationale used to classify the awards as restricted research.

(c) For reporting purposes, institutions shall use the accrual accounting method as required by the Texas Comptroller for the Government-wide Financial Statements for the restricted research expenditure report.

*§13.125. Report on Restricted Research Awards.*

(a) Each ~~[Not later than June 30, each]~~ eligible institution shall provide to the Commissioner, at a date specified by the Commissioner, a verified report of all restricted research awards for the current state fiscal year. Only those projects or activities described in §13.124 of this title (relating to Standards and Accounting Methods for Determining Restricted Research Expenditures) shall be included in the report.

(1) - (3) (No change.)

(4) The Commissioner shall provide the reports made under this section to each institution eligible for either TCRF or CRSF [eligible].

(b) ~~The [Not later than July 31 of each year, the] Commissioner shall convene the Restricted Research Committee under §13.123 of this title relating to Restricted Research Committee [a review panel of representatives of all eligible institutions. Each eligible institution shall recommend a representative to serve on the review panel].~~

(1) The Commissioner shall provide each committee [review panel] member with a copy of each ~~[eligible]~~ institution's report on restricted research awards.

(2) The committee [review panel] shall examine the institutions' reports on restricted research awards and make a final determination of ~~[provide a report to the Commissioner, recommending to the Commissioner]~~ those awards from which expenditures may be classified as restricted research expenditures.

(3) The Commissioner shall make public the committee's determinations of awards from which expenditures may be classified as restricted research expenditures. ~~[The Commissioner shall review the report of the review panel and determine those awards from which expenditures may be classified as restricted research expenditures.]~~

(4) ~~Not later than August 15, the Commissioner shall provide each institution with a copy of the recommendations of the review panel and notify each institution of its awards from which expenditures may be classified as restricted research expenditures.~~

~~{(5) If an institution wishes to appeal the classification of a restricted research award, the President of the institution shall notify the Commissioner, in writing, not later than September 1. The Commissioner will review the appeal, determine whether to re-classify the expenditure, and notify the institution of the decision.}~~

*§13.126. Reporting of Restricted Research Expenditures [and Use of Allocated Funds.]*

(a) Each [Not later than October 15, each eligible] institution eligible for either TCRF or CRSF shall provide a verified [~~preliminary~~] report of its restricted research expenditures to the Commissioner through the Sources and Uses template.

(1) The report [Preliminary Report] will include restricted research expenditures from the awards approved by the Commissioner under §13.125 of this title (relating to Report on Restricted Research Awards).

(2) Certain expenditures related to any award classified as restricted research are prohibited to be recorded as restricted research expenditures; indirect costs; capital construction; and costs associated with entertainment or any direct individual benefit. Examples of costs associated with entertainment or any direct individual benefit include costs for shows, sports events, meals, lodging, rentals, gratuities, or personal, non-research related travel. [Expenditures for capital construction and for indirect costs of any restricted research award shall not be included in the Preliminary Report.]

~~{(b) [Not later than November 1 of each fiscal year for which there is an appropriation for the Research Development Fund, the Commissioner shall provide a preliminary restricted research expenditure report to the Comptroller and recommend funding allocations from the Research Development Fund to eligible institutions].}~~

~~{(e) The funds shall be apportioned among the eligible institutions based on the average amount of restricted research expenditures by each institution per year for the three preceding state fiscal years.}~~

~~(b) [(d)] Not later than December 1, each [eligible] institution that received a TCRF or CRSF appropriation [an RDF allocation] in the preceding fiscal year shall provide the Commissioner and the Legislative Budget Board with a report that describes how the institution used the appropriated [allocated] funds in the preceding fiscal year. The report shall include a description of expenditures of appropriated [allocated] funds received during prior fiscal years.~~

*§13.127. Audits.*

The Commissioner may require an audit of the restricted research records of an [eligible] institution eligible for either TCRF or CRSF to verify the submitted information.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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## SUBCHAPTER M. TOTAL RESEARCH EXPENDITURES

### 19 TAC §§13.300 - 13.304

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§13.300-13.304 concerning standards and accounting methods for determining total research expenditures. The intent of these new sections is to prescribe standards

and accounting methods for total restricted research expenditures required by Texas Education Code, Chapter 62, Subchapter C, §62.053.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of these new sections.

Dr. Peebles has also determined that for the first five years the new sections are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of how total research expenditures are accounted. There are no significant economic costs anticipated to persons and institutions who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The new sections are proposed under the Texas Education Code, Chapter 62, Subchapter C, §62.053, which authorized the Coordinating Board to prescribe standards and accounting methods for determining the amount of total research funds expended.

The new sections affect the implementation of Texas Education Code, §§62.051 - 62.0535.

*§13.300. Purpose and Scope.*

The purpose of this subchapter is to establish standards and accounting methods for determining total research expenditures based on all research conducted at Texas higher education institutions.

*§13.301. Authority.*

Texas Education Code, §61.051(h) and §61.0662, establish the requirement for the Coordinating Board to maintain an inventory of all institutional and programmatic research activities conducted by Texas higher education institutions. Texas Education Code, §62.051, establishes the Texas Research University Fund. Texas Education Code, §62.053, authorizes the Coordinating Board to prescribe standards and accounting methods for determining the amount of total research funds expended.

*§13.302. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Annual Financial Report (AFR)--Institutional financial report for one fiscal year.

(2) Areas of special interest--Major research topics important to the public as listed in the Sources and Uses template.

(3) Coordinating Board or Board--The Texas Higher Education Coordinating Board.

(4) Research Expenditures or Expenditures--All amounts of money paid out by an institution to support Research and Development activities.

(5) Pass-through to sub-recipient--External award funds that are passed from one entity to a sub-recipient. The sub-recipient expends the award funds on behalf of or in connection with the pass-through entity.

(6) Research and Development (R&D)-- Consists of research and development activities:

(A) Research--The systematic study directed toward fuller scientific knowledge or understanding of the subject studied.

(B) Development--The systematic use of knowledge or understanding gained from research, directed toward the production of useful materials, devices, systems, or methods including design and development of prototypes and processes.

(C) R&D also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(7) R&D expenses that do not meet the narrow definition of R&D expenditures used in the Sources and Uses template--Externally-funded activities that are part of research expenditures listed in the AFR, but that cannot be classified as R&D using the definitions of the Sources and Uses template.

(8) Research fields--Subject areas for R&D as listed in the Sources and Uses template.

(9) Sources and Uses template--An annual survey of Texas general academic and health-related institutions to detail financial information and provide specific information about revenues and expenditures.

§13.303. Standards and Accounting Methods for Determining Total Research Expenditures.

(a) The AFR for each institution establishes R&D expenses as the combined research and development expenses of the institution.

(b) R&D expenses from the AFR are reconciled for the total research expenditures by:

(1) Exclusion of R&D expenses that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Sources and Uses template.

(2) Inclusion of indirect costs associated with expenses for R&D as defined for the Sources and Uses template.

(3) Inclusion of capital outlay for research equipment, not including R&D plant expenses or construction.

(4) Inclusion of expenditures for conduct of R&D made by an institution's research foundation or 501(c) corporation on behalf of the institution and not reported in the institution's AFR, including indirect costs.

(5) Inclusion of pass-throughs from Texas Engineering Experiment Station not reported in R&D expenditures as defined for the Sources and Uses template.

(6) Inclusion, for Texas A&M University, of consolidated research expenditures from Texas A&M University and its service agencies.

(7) The Sources and Uses template establishes research expenditures for each institution by research field and areas of special interest, both accounted by funding source.

§13.304. Reporting of Total Research Expenditures.

(a) The Board shall annually post a report of total research expenditures of all public institutions of higher education on its website.

(b) Not later than January 1 of each year, the Board shall submit to the legislature information regarding human stem cell research obtained by the Board from reports required by this subsection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502550

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 427-6114



## TITLE 22. EXAMINING BOARDS

### PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

#### CHAPTER 7. ADMINISTRATION

##### 22 TAC §7.10

The Texas Board of Architectural Examiners proposes an amendment to §7.10, concerning General Fees. The proposed amendment modifies the fee schedule in §7.10 to implement a change in automated clearing house network (ACH) service charges by Texas.gov, a third-party vendor that processes internet payments for the Board. Currently, Texas.gov charges \$0.25 plus 2.25% of the sum of the registration fee and \$0.25 for ACH payments. However, beginning September 1, 2015, Texas.gov will charge a flat fee of \$1.00 for each ACH payment.

The Texas Board of Architectural Examiners proposes further amendment of §7.10 to implement House Bill 7 (2015), which repeals the \$200 professional fee previously imposed by statute. Formerly, the \$200 professional fee applied to registrations and registration renewals for architects, landscape architects, and interior designers. The proposed amendment modifies the fee schedule by decreasing renewal and registration fees by \$200, as appropriate.

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no significant adverse fiscal impact upon state government, no fiscal impact on local government, and no fiscal impact on the Texas Board of Architectural Examiners.

Mr. Brenton also has determined that, for the first five-year period the amended rule is in effect, the expected public benefit is a small decrease of the amount of fees paid by registrants and applicants using ACH payments for any transaction over \$30.

The proposed rule will have no meaningfully adverse impact upon those who are required to comply with the rule. In cases where a fee of \$30 or less is paid using ACH, the registrant or applicant will pay a slightly higher amount in ACH service charges. However, the amount will be minimal. As an example, for a \$10 fee, an ACH payor will incur a \$1.00 service charge under the modified schedule as opposed to \$.48 under the previous schedule. Note that this fee only applies to those who opt to pay using ACH. No fee is charged for payments made by check. Therefore, the amendments to the rules will have no negative fiscal impact on small or micro-business and no Economic Impact Statement or Regulatory Flexibility Analysis are required.

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code. The amendment implements §§1051.651, 1052.054, and 1053.052 of the Texas Occupations Code, which grants to the Board authority to set fees for Board actions involving administrative expense, to collect such fees by electronic payment, and to set fees to process such payments.

The proposed amendment to this rule does not affect any other statutes, articles or codes.

*§7.10. General Fees.*

(a) FAILURE TO TIMELY PAY A REGISTRATION RENEWAL WILL RESULT IN THE AUTOMATIC CANCELLATION OF REGISTRATION BY OPERATION OF LAW.

(b) The following fees shall apply to services provided by the Board in addition to any fee established elsewhere by the rules and regulations of the Board or by Texas law. Payment of fees through the Internet is an online service provided by Texas.gov, the official Web site of the State of Texas. The following additional payments for the online service are not retained by the Board: [A person who uses the online service to pay fees must pay an additional \$.25 plus 2.25% of the fee to cover the ongoing operations and enhancements of Texas.gov which is provided by a third party in partnership with the State of Texas.] [Figure: 22 TAC §7.10(b)]

(1) A person who uses the online service to pay fees with a credit card must pay an additional \$.25 plus 2.25% of the sum of the fee and \$.25.

(2) A person who uses online services to pay fees by utilizing the Automated Clearing House Network ("ACH" sometimes referred to as an "electronic check" or a "direct bank draft") must pay \$1.00 per transaction instead of the fee referenced in paragraph (1) of this subsection.

Figure: 22 TAC §7.10(b)(2)

(c) The Board cannot accept cash as payment for any fee.

(d) An official postmark from the U.S. Postal Service or other delivery service receipt may be presented to the Board to demonstrate the timely payment of any fee.

(e) If a check is submitted to the Board to pay a fee and the bank upon which the check is drawn refuses to pay the check due to insufficient funds, errors in routing, or bank account number, the fee shall be considered unpaid and any applicable late fees or other penalties accrue. The Board shall impose a processing fee for any check that is returned unpaid by the bank upon which the check is drawn.

(f) A Registrant who is in Good Standing or was in Good Standing at the time the Registrant entered into military service shall be exempt from the payment of any fee during any period of active duty service in the U.S. military. The exemption under this subsection shall continue through the remainder of the fiscal year during which the Registrant's active duty status expires.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2015.

TRD-201502483

Julie Hildebrand  
Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 305-9040

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**PART 3. TEXAS BOARD OF  
CHIROPRACTIC EXAMINERS**

**CHAPTER 71. PETITION FOR ADOPTION OF  
RULES**

**22 TAC §71.2**

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 71, §71.2, concerning Petition for Adoption of Rules. The proposed amended rule will assist the Board in serving the public, stakeholders and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendment of the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amended rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amended rule does not impose any duties or obligations upon small businesses or individuals.

This amended rule was proposed upon a recommendation by the Rule Committee to the Board and approved by the Board for publication. Comments were received concerning during the presentation of the rule amendment to the Board on May 21, 2015.

The comments reflected that the modification of who may waive portions of a rule petition and whether that petition shall be considered effective was a prudent endeavor. The discussion amongst the Board noted that at certain times during the year a rule petition could be requested, but the Board would not meet for over 60 days, and to alleviate undue delay, the executive director could readily waive rule petition requirements for petitions that might not meet the full substance of the rule but encapsulated the spirit of the rule.

Additional comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705 or [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us), no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

This amended rule is proposed under Texas Occupations Code §201.152 and Texas Government Code §2001.021, relating to

rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. Section 2001.021 requires state agencies to adopt a rule prescribing the form for a rule petition and the procedure for its submission, consideration and disposition.

No other statutes, articles, or codes are affected by the amendment.

§71.2. *Petition for Adoption of Rules.*

(a) As authorized by the APA, §2001.021(a), an interested person by petition to the Board may request the adoption of a rule.

(b) Form for submission. A person must submit a petition for adoption of rules in writing via mail, fax, e-mail, or hand-delivery to the Executive Director or General Counsel of the Board. The petition shall contain the following information as applicable and except as may be waived by the Executive Director or designee [Board]:

(1) the name and contact information of the petitioning party and his or her interest in the adoption of the rule;

(2) a statement of the legal authority and jurisdiction under which the petition is filed;

(3) the exact language of the proposed rule requested to be adopted;

(4) a statement and legal references regarding whether, to the petitioner's knowledge, the requested rule is in conflict with any existing rule, ruling, order or opinion of the Board or any other rules or statutes; and

(5) a statement of the purpose of the requested rule.

(c) Consideration and Disposition. During the sixty (60) day period following receipt of the petition by the Board, the Rules Committee shall meet to consider the petition. Not less than ten (10) days prior to such meeting, the Board shall notify the petitioning party in writing of the date, time and place the petition shall be considered.

(1) At this meeting, the petitioning party may be given an opportunity to present matters to the Rules Committee, at the Committee's discretion.

(2) The Committee, at the conclusion of the meeting, shall decide whether to deny the petition or to recommend to the Board at the next board meeting to publish the requested rule in the *Texas Register* for comment. If the Committee decides to deny the petition, the Committee shall state its reasons for denial in writing to the petitioning party. A recommendation by the Rules Committee to publish the requested rule for comment shall constitute initiation of rulemaking for purposes of §2001.021(c)(2) of the APA.

(3) At the next board meeting following the Rules Committee meeting, the Board shall consider the Rules Committee's recommendation. The Board shall then decide whether to deny the petition or to publish the requested rule in the *Texas Register* for comment. If the Board decides to deny the petition, the Board shall state its reasons for denial in writing to the petitioning party.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 2, 2015.

TRD-201502494

Bryan Snoddy  
General Counsel  
Texas Board of Chiropractic Examiners  
Earliest possible date of adoption: August 16, 2015  
For further information, please call: (512) 305-6715



## CHAPTER 72. APPLICATIONS AND APPLICANTS

### 22 TAC §72.2

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 72, §72.2, concerning Application for Licensure. The proposed amended rule will assist the Board in serving the public, stakeholders and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendment of the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amended rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amended rule does not impose any duties or obligations upon small businesses or individuals.

This amended rule was proposed upon a recommendation by the Rule Committee to the Board and approved by the Board for publication. Comments were received concerning during the presentation of the rule amendment to the Board on May 21, 2015.

The comments reflected that the Board's rules did not fully capture the strictures of the statute contained in §201.502 of the Chiropractic Act. The Board considered the addition of this language as useful in providing an applicant notice that of all ground upon which an application may be refused to the admission of the practice of chiropractic.

Additional comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705 or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

This amended rule is proposed under Texas Occupations Code §201.152, relating to rules and §201.502, relating to grounds for refusal, revocation, or suspension of license. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. Section 201.502 provides the Board with discretion to refuse admission to practice for twenty-two (22) discrete actions.

No other statutes, articles, or codes are affected by the amendment.

§72.2. *Application for License.*

(a) All individuals who wish to practice chiropractic in this state, and who are not otherwise licensed under law, must successfully pass an examination given by or at the direction of the board.

(b) An applicant for licensure through examination shall submit to the Board a written application, on a form provided by the Board. The information contained in the application shall be verified by affidavit of the applicant. Along with the application, an applicant shall also submit a nonrefundable fee for verification of educational courses/grades for college and a nonrefundable examination fee, as provided by §78.6 of this title (relating to Fees and Charges for Public Information). Upon successfully passing the examination, an applicant shall submit a fee for a new license as provided in §78.6 of this title. The amount of the fee shall be prorated from the month of examination to the birth month of the applicant.

(c) Applications for examination must be legibly printed in ink or typewritten on the board form, which will be furnished by the board upon request.

(d) Within 30 days of receiving the completed application, required supporting materials, and required fees, the board shall provide to the applicant a notification of the applicant's status regarding their qualification to take the jurisprudence examination.

(e) The filing of an application and tendering of the fees to the board shall not in any way obligate the board to admit the applicant to examination until such applicant has been approved by the board as meeting the statutory requirements for admission to the examination for licensure.

(f) Any person furnishing false information on such application shall be denied the right to take the examination, or if the applicant has been licensed before it is made known to the Board of the falseness of such information, such license shall be subject to suspension, revocation or cancellation in accordance with the Chiropractic Act, Occupations Code §201.501.

(g) Applicants seeking licensure may be refused admission to the practice of chiropractic for certain prohibited acts in accordance with Chiropractic Act, Occupations Code §201.502.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 2, 2015.

TRD-201502497

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 305-6715



## CHAPTER 78. RULES OF PRACTICE

### 22 TAC §78.8

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 78, §78.8, concerning Complaint Procedures. The proposed amended rule is necessary in order to remove the requirement for a 120-day hearing that is not found within the Chiropractic Act or the Administrative Procedure Act.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local gov-

ernment as a result of enforcing or administering the proposed amendment of the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amended rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amended rule does not impose any duties or obligations upon small businesses or individuals.

This amended rule was proposed upon a recommendation by the Rule Committee to the Board and approved by the Board for publication. The purpose of the amendment is to remove a requirement for a hearing that is unsupported by statutory provisions mentioned in subsection (g)(1)(C).

No comments were received regarding proposal of the amendment.

Comments on the proposed amended rule and/or a request for a public hearing on the proposed amended may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705 or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed new rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the amendment.

#### §78.8. Complaint Procedures.

(a) Filing complaints. A person who has a complaint about a licensee, facility or CRT may file a complaint with the board in person at the board's office, or in any written form, including submission of a completed complaint form. The board adopts the following form in both English and Spanish as its official complaint form which shall be available from the board upon request. A complaint shall contain information necessary for the proper processing of the complaint by the board, including:

Figure: 22 TAC §78.8(a)

{Figure: 22 TAC §78.8(a)}

(1) complainant's name, address and phone number;

(2) name, address and phone number of the chiropractor, chiropractic facility, CRT or other person, firm or corporation, if known, against whom the complaint is made;

(3) date, time and place of occurrence of alleged violation; and

(4) complete description of incident giving rise to the complaint.

(b) Categories of complaints and investigation.

(1) The board shall distinguish between categories of complaints as follows:

(A) consumer and patient complaints against chiropractors, CRTs, or chiropractic facilities regarding alleged violations of

state law, including the Texas Chiropractic Act, or board rules or orders;

(B) alleged unauthorized practice of chiropractic by unlicensed individuals, unregistered facilities or CRTs, or by a licensee, facility or CRT while a suspension order or restrictive sanction by the board is in effect;

(C) licensure, registration or reinstatement applications;

(D) alleged advertising violations by chiropractors or chiropractic facilities.

(2) The board shall prioritize complaints for purposes determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(A) The board shall create and maintain a written list of the categories of complaints in order from the most serious to least serious violations of the Texas Chiropractic Act or administrative rules. The list shall also cite the specific rules and statutes that may have been violated, and the fines or other penalties that may be assessed.

(B) The board shall have this list available at the board office and on the board website for interested parties.

(C) The board shall use this list to set priorities for the investigation of complaints against licensees with the most serious complaints being of the highest priority.

(3) All complaints or reports of alleged violations will be investigated by the board. However, anonymous complaints may not be investigated if insufficient information is provided or the allegations are vague, appear to lack a credible or factual foundation, or cannot be proved for lack of a witness or other evidence. The executive director of the board will determine whether or not an anonymous report will be logged in as a complaint for investigation. A complaint shall not be dismissed without appropriate consideration. The board and a complainant shall be advised of a dismissal of a complaint.

(4) The board staff may initiate an investigation, including the filing of a complaint, on an individual or facility regulated by the board for compliance with the law or board rules or order.

(c) Enforcement Committee.

(1) The President shall appoint an Enforcement Committee to consider all complaints filed with the board. The Executive Director under the direction of the Enforcement Committee chair shall supervise all investigations.

(2) The Enforcement Committee shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents, to issue commissions to take depositions, to administer oaths and to take testimony concerning all matters within the assigned jurisdiction.

(3) The Enforcement Committee shall determine the disposition of a complaint as provided in this subsection and §78.9 and §78.10 of this title (relating to Disciplinary Guidelines and Schedule of Sanctions, respectively). The Enforcement Committee may delegate the authority to close certain complaints to the Executive Director.

(4) The Enforcement Committee may schedule an informal conference in a case in order to hear from the complainant and the respondent, in person, or if it believes a conference may facilitate the resolution of the case. A respondent, although not required, is urged to attend the informal conference. A complainant will be given notice of

the conference and invited to attend. A complainant is not required to attend an informal conference.

(5) Informal conferences shall not be deemed to be meetings of the board.

(6) In a case where the Enforcement Committee has made a finding of a violation for which a sanction should be imposed, the committee may direct staff to offer an agreed order to the respondent in an effort to resolve the case informally. If an agreed order is not accepted by the respondent or no agreed order is offered, the case will be referred to the SOAH for formal hearing. The Enforcement Committee shall present an agreed order to the board for its approval once it has been signed by the respondent. Should the board amend the proposed order, the executive director shall contact the respondent to seek concurrence. If the respondent does not concur, the Enforcement Committee shall determine whether negotiations on an agreed order should continue or to refer the case for formal hearing.

(d) Commencement of formal hearing proceedings. Board staff shall commence formal hearing proceedings by filing the case with the SOAH and by giving notice to the respondent as provided §79.2 of this title (relating to Commencement of Enforcement Proceedings).

(e) Rescission of probation.

(1) The board may at any time while an individual or facility is on probation upon majority vote rescind the probation and enforce the board's original action suspending such license or registration for violation of the terms of the probation or for other good cause as the board in its discretion may determine. Violations of probation shall be referred to the Enforcement Committee for action under this section. Probation shall not be rescinded without notice and an opportunity for a hearing on whether or not the probation has been violated.

(2) The board shall maintain a chronological and alphabetical listing of licensees, facilities, and CRTs, who have had their license or registration, suspended or revoked, and shall monitor compliance with each order. Any noncompliance observed as a result of monitoring shall be referred to the Enforcement Committee for action under this section.

(f) Reinstatement. An individual or chiropractic facility whose license or registration has been revoked for a period of more than one year may, after the expiration of at least one year from the date that such revocation became final, apply to the board, on forms provided by the board, for reinstatement. In considering the reinstatement of a revoked license or registration, the board in its discretion may:

(1) deny reinstatement; or

(2) grant reinstatement:

(A) without condition;

(B) with probation for a specified period of time under specified conditions; or

(C) with or without reexamination or additional training.

(g) Temporary suspension upon threat to public. The Enforcement Committee or the board, with a two-thirds vote, may temporarily suspend a license to practice chiropractic in the State of Texas if the committee or the board determines from the preponderance of the evidence or information presented to it that continued practice by the licensee constitutes a continuing or imminent threat to the public welfare. The purpose of a temporary suspension is to protect the public until a preliminary hearing can be held.



(1) Such suspension may occur without notice or hearing if at the time the suspension is ordered, a hearing on whether a disciplinary proceeding should be initiated is scheduled not later than the 14th day after the date of suspension.

(A) The purpose of the 14-day hearing is to provide the licensee with notice and an opportunity to review the Board's evidence or information, to present evidence, raise defenses, and to be heard.

(B) At the 14-day hearing, the only issue presented is whether the temporary suspension should be dissolved or kept in place. If the administrative law judge finds that the Board has competent evidence or information that continued practice by the licensee constitutes a continuing or imminent threat to the public welfare, then the administrative law judge may issue an order keeping the temporary suspension in place pending the initiation of other disciplinary proceedings against the licensee.

~~[(C) If a temporary suspension is ordered, the Board shall initiate other disciplinary proceedings within 120 days of the date of the order of temporary suspension. If criminal action is pending against the licensee, a final hearing on such disciplinary proceedings may be deferred until such time as the criminal action is finally adjudicated.]~~

(2) A second hearing on the suspended license shall be held not later than the 60th day after the date the suspension was ordered. This 60-day hearing shall determine whether the suspension shall remain in effect pending the initiation, prosecution, and final determination of other disciplinary proceedings against the licensee. If the 60-day hearing is not held in the time required, the license is reinstated without further action of the board or committee.

(3) A hearing held under this subsection shall be conducted by the SOAH.

(4) The licensee will be notified of a suspension and any hearing scheduled under this subsection by certified mail to the address on file with the Board and by facsimile and/or email if such numbers or addresses are known to the Board. The notice sent by certified mail is legal notice under this section.

(5) The suspension shall remain in effect pending further action by the board unless an administrative law judge, the committee, or the board orders the suspension rescinded after hearing.

(6) The licensee shall not practice chiropractic during the duration of the suspension.

(7) During the suspension the enforcement and investigatory processes will continue.

(8) The licensee may waive either the 14-day or 60-day hearing or may agree that such hearings can be held beyond the statutory deadlines. The temporary suspension shall remain in effect until a hearing is held or is otherwise dissolved.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502560

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 305-6715

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**22 TAC §78.13**

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to Chapter 78, §78.13, concerning Scope of Practice. The proposed amendment is necessary in order to clarify the rule and to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed amendment is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the proposal.

Ms. Yarbrough has determined that for the first five-year period the proposed amendment is in effect, the public benefit expected as a result of the proposal will be clarifying and reorganizing new rules resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed amendment will not have an adverse economic effect on small businesses or individuals because the proposal does not impose any duties or obligations upon small businesses or individuals.

This amendment was proposed after a recommendation by the Rule Committee to the Board and approved by the Board for publication. The purpose of the amendment is to modify subsection (a) to make clear that the definitions in the section were applicable throughout the chapter.

No comments were received regarding proposal of the amendment.

Comments on the proposed amendment and/or a request for a public hearing on the proposal may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705 or [rules@tbce.state.tx.us](mailto:rules@tbce.state.tx.us), no later than 30 days from the date that this proposal is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the proposal.

*§78.13. Scope of Practice.*

(a) Definitions. The following words and terms, when used in this chapter [section], shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Board--The Texas Board of Chiropractic Examiners.
- (2) CPT Codebook--The American Medical Association's annual Current Procedural Terminology Codebook (2004). The CPT Code- book has been adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services as Level I of the common procedure coding system.
- (3) Cosmetic treatment--A treatment that is primarily intended by the licensee to address the outward appearance of a patient.
- (4) Incision--A cut or a surgical wound; also, a division of the soft parts made with a knife or hot laser.
- (5) Musculoskeletal system--The system of muscles and tendons and ligaments and bones and joints and associated tissues and nerves that move the body and maintain its form.

(6) On-site--The presence of a licensed chiropractor in the clinic, but not necessarily in the room, while a patient is undergoing an examination or treatment procedure or service.

(7) Practice of chiropractic--The description and terms set forth under Texas Occupations Code §201.002, relating to the practice of chiropractic.

(8) Subluxation--A lesion or dysfunction in a joint or motion segment in which alignment, movement integrity and/or physiological function are altered, although contact between joint surfaces remains intact. It is essentially a functional entity, which may influence biomechanical and neural integrity.

(9) Subluxation complex--A neuromusculoskeletal condition that involves an aberrant relationship between two adjacent articular structures that may have functional or pathological sequelae, causing an alteration in the biomechanical and/or neuro-physiological reflections of these articular structures, their proximal structures, and/or other body systems that may be directly or indirectly affected by them.

(b) Aspects of Practice.

(1) A person practices chiropractic if they:

(A) use objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or

(B) perform nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.

(2) Needles may be used in the practice of chiropractic under standards set forth by the Board but may not be used for procedures that are incisive or surgical.

(3) This section does not apply to:

(A) a health care professional licensed under another statute of this state and acting within the scope of their license; or

(B) any other activity not regulated by state or federal law.

(c) Examination and Evaluation.

(1) In the practice of Chiropractic, licensees of this board provide necessary examination and evaluation services to:

(A) Determine the bio-mechanical condition of the spine and musculoskeletal system of the human body including, but not limited to, the following:

(i) the health and integrity of the structures of the system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;

(iii) the existence of the structural pathology, functional pathology or other abnormality of the system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology or other abnormality of the system;

(v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) Determine the existence of subluxation complexes of the spine and musculoskeletal system of the human body and to evaluate their condition including, but not limited to:

(i) The nature, severity, complicating factors and effects of said subluxation complexes;

(ii) the etiology of said subluxation complexes; and

(iii) The effect of said subluxation complexes on the health of an individual patient or population of patients;

(C) Determine the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) Determine the treatment procedures that are contraindicated in the therapeutic care of a patient or condition; and

(E) Differentiate a patient or condition for which chiropractic treatment is appropriate from a patient or condition that is in need of care from a medical or other class of provider.

(2) To evaluate and examine individual patients or patient populations, licensees of this board are authorized to use:

(A) physical examinations;

(B) diagnostic imaging;

(C) laboratory examination;

(D) electro-diagnostic testing, other than an incisive procedure;

(E) sonography; and

(F) other forms of testing and measurement.

(3) Examination and evaluation services which require a license holder to obtain additional training or certification, in addition to the requirements of a basic chiropractic license, include:

(A) Performance of radiologic procedures, which are authorized under the Texas Chiropractic Act, Texas Occupations Code, Chapter 201, may be delegated to an assistant who meets the training requirements set forth under §78.1 of this title (relating to Registration of Chiropractic Radiologic Technologists).

(B) Technological Instrumented Vestibular-Ocular-Nystagmus Testing may be performed by a licensee with a diplomate in chiropractic neurology and that has successfully completed 150 hours of clinical and didactic training in the technical and professional components of the procedures as part of coursework in vestibular rehabilitation including the successful completion of a written and performance examination for vestibular specialty or certification. The professional component of these procedures may not be delegated to a technician and must be directly performed by a qualified licensee.

(d) Analysis, Diagnosis, and Other Opinions.

(1) In the practice of chiropractic, licensees may render an analysis, diagnosis, or other opinion regarding the findings of examinations and evaluations. Such opinions could include, but are not limited to, the following:

(A) An analysis, diagnosis or other opinion regarding the biomechanical condition of the spine or musculoskeletal system including, but not limited to, the following:

(i) the health and integrity of the structures of the system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;

(iii) the existence of structural pathology, functional pathology or other abnormality of the system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology, or other abnormality of the system;

(v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) An analysis, diagnosis or other opinion regarding a subluxation complex of the spine or musculoskeletal system including, but not limited to, the following:

(i) the nature, severity, complicating factors and effects of said subluxation complex;

(ii) the etiology of said subluxation complex; and

(iii) the effect of said subluxation complex on the health of an individual patient or population of patients;

(C) An opinion regarding the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) An opinion regarding the likelihood of recovery of a patient or condition under an indicated course of treatment;

(E) An opinion regarding the risks associated with the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(F) An opinion regarding the risks associated with not receiving the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(G) An opinion regarding the treatment procedures that are contraindicated in the therapeutic care of a patient or condition;

(H) An opinion that a patient or condition is in need of care from a medical or other class of provider;

(I) An opinion regarding an individual's ability to perform normal job functions and activities of daily living, and the assessment of any disability or impairment;

(J) An opinion regarding the biomechanical risks to a patient, or patient population from various occupations, job duties or functions, activities of daily living, sports or athletics, or from the ergonomics of a given environment; and

(K) Other necessary or appropriate opinions consistent with the practice of chiropractic.

(e) Treatment Procedures and Services.

(1) In the practice of chiropractic, licensees recommend, perform or oversee the performance of the treatment procedures that are indicated in the therapeutic care of a patient or patient population in order to:

(A) Improve, correct, or optimize the biomechanical condition of the spine or musculoskeletal system of the human body including, but not limited to, the following:

(i) the health and integrity of the structures of the musculoskeletal system; and

(ii) the coordination, balance, efficiency, strength, conditioning, and functional health and integrity of the musculoskeletal system;

(B) Promote the healing of, recovery from, or prevent the development or deterioration of abnormalities of the biomechanical condition of the spine or musculoskeletal system of the human body including, but not limited to, the following:

(i) the structural pathology, functional pathology, or other abnormality of the musculoskeletal system;

(ii) the effects and complicating factors of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system;

(iii) the etiology of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system; and

(iv) the effect of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system on the health of an individual patient or population of patients; and

(C) Promote the healing of, recovery from, or prevent the development or deterioration of a subluxation complex of the spine or musculoskeletal system, including, but not limited to, the following:

(i) the structural pathology, functional pathology, or other abnormality of a subluxation complex;

(ii) the effects and complicating factors of any structural pathology, functional pathology, or other abnormality of a subluxation complex;

(iii) the etiology of any structural pathology, functional pathology, or other abnormality of a subluxation complex; and

(iv) the effect of any structural pathology, functional pathology, or other abnormality of a subluxation complex on the health of an individual patient or population of patients.

(2) In order to provide therapeutic care for a patient or patient population, licensees are authorized to use:

(A) osseous and soft tissue adjustment and manipulative techniques;

(B) physical and rehabilitative procedures and modalities;

(C) acupuncture and other reflex techniques;

(D) exercise therapy;

(E) patient education;

(F) advice and counsel;

(G) diet and weight control;

(H) immobilization;

(I) splinting;

(J) bracing;

(K) therapeutic lasers (non-invasive, nonincisive), with adequate training and the use of appropriate safety devices and procedures for the patient, the licensee and all other persons present during the use of the laser;

(L) durable medical goods and devices;

(M) homeopathic and botanical medicines, including vitamins, minerals; phytonutrients, antioxidants, enzymes, nutraceuticals, and glandular extracts;

(N) non-prescription drugs;

(O) referral of patients to appropriate health care providers; and

(P) other treatment procedures and services consistent with the practice of chiropractic.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201502562

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 305-6715



## CHAPTER 80. PROFESSIONAL CONDUCT

### 22 TAC §§80.1 - 80.5

The Texas Board of Chiropractic Examiners (Board) proposes new Chapter 78 and §§80.1 - 80.5, concerning General Regulatory Provisions. The new rules are necessary in order to comply with Legislative requirements regarding dual office holding, merit selection principles, sick leave pool, private donors and contract monitoring.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed rules are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Yarbrough has determined that for the first five-year period the proposed rules are in effect, the public benefit expected as a result of the proposed rules will be greater public confidence in the administration of government and clear guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed rules will not have an adverse economic effect on small businesses or individuals because the proposed rules do not impose any duties or obligations upon small businesses or individuals.

These rules were proposed after a comprehensive review of legislatively mandated rule provisions provided by the Office of the Attorney General.

No comments were received concerning the proposal of these rules and their organization.

Comments on the proposed rules and/or a request for a public hearing on the proposed rules may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, TX 78701; fax: (512) 305-6705 or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed rules are published in the *Texas Register*.

The rules are proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The rules are also proposed pursuant to Texas Government Code Chapters 574, 655, 661, 575, and 2262 that legislatively mandate the adoption of certain provisions.

No other statutes, articles, or codes are affected by the rules.

### §80.1. Dual Office Holding.

(a) Pursuant to Texas Government Code Chapter 574 (regarding Dual Office Holding), an employee of the Board who is a non-elective state officer may not accept an offer to serve in another non-elective office unless the officer obtains from the Board a finding that the officer has satisfied Article XVI, Section 40, of the Texas Constitution.

(b) The minutes of the Board meeting will include the finding that was made and any compensation that the non-elective officer is to receive from holding the additional office, including salary, bonus, or per diem payment.

### §80.2. Merit Selection Principles.

(a) Pursuant to Texas Government Code Chapter 655 (regarding Merit Selection Principles), the following principles will be effective if the Board becomes required by federal law or regulation to use a merit system of personnel administration for the Board or for a program administered under the Board.

(b) The Board shall establish policies and procedures to ensure compliance with the federal requirements; and the recruitment, selection, and advancement of highly competent Board personnel.

(c) The Board shall ensure that it:

(1) recruits, selects, and promotes its employees according to the relative abilities, knowledge, and skills of the applicants or employees;

(2) provides equitable and adequate compensation to an employee;

(3) provides any employee training necessary to ensure performance of a high quality;

(4) uses the adequacy of an employee's job performance to determine whether the employee will be retained;

(5) treats a job applicant or employee fairly in all aspects of personnel administration;

(6) complies fully with state and federal equal opportunity and nondiscrimination laws;

(7) protects an employee against coercion for partisan political purposes and prohibits the employee from using employment status to interfere with or affect the result of an election or nomination for office; and

(8) implements any additional merit principles required by federal law or regulation.

### §80.3. Sick Leave Pool.

(a) Pursuant to Government Code Chapter 661, Subchapter A (regarding Sick Leave Pool), the Board authorizes a sick leave pool program to allow a Board employee to voluntarily transfer earned sick leave to a pool for use by other employees.

(b) The executive director or designee shall administer the sick leave pool.

(c) The prescribed procedures relating to the operation of the sick leave pool will be itemized in the Board's *Employee Handbook*.

### §80.4. Private Donors.

(a) Pursuant to Government Code §441.006(b)(2), Government Code Chapter 575, Government Code Chapter 2255, and the General Appropriations Act, this section establishes the criteria, procedures and standards of conduct governing the relationship between the Board and its members and employees and private donors. This section authorizes the Board to accept donations it determines are in the public interest to accept, and that further its goals and programs.

(b) A private donor may make monetary or non-monetary donations, including contributions and gifts, to the Board to be spent or used for public purposes. Use by the Board of the donation must be consistent with the mission and duties of the Board. If the donor specifies the purpose of the donation, the Board should use the donation for that purpose. A donation may be accepted only if it does not influence or reasonably appear to influence, the Board or staff in the performance of official duties.

(c) On behalf of the Board, the executive director may accept donations that do not exceed \$500 in value. Donations that exceed \$500 in value must be accepted by the Board in open meeting. Acceptance of the donation by the Board will be recorded in the minutes, together with the name of the donor, description of the donation and a statement of the purpose of the donation, if any.

(d) Monetary donations must be spent in accordance with the State Appropriations Act and deposited in the state treasury unless statutorily exempted. Reimbursements for employee travel expenses or other operating expenses are not considered to be donations.

(e) The Board may document terms or conditions relating to the donation through an agreement with the donor.

§80.5. Contract Monitoring.

Contract monitoring, when applicable, is primarily conducted by the administrative staff of the Board under the authority and direction of Government Code §2261.202.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

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Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6715



## PART 9. TEXAS MEDICAL BOARD

### CHAPTER 175. FEES AND PENALTIES

#### 22 TAC §175.1, §175.2

The Texas Medical Board (Board) proposes amendments to §175.1, concerning Application and Administrative Fees and §175.2, concerning Registration and Renewal Fees.

The amendments to §175.1, decreases physician licensure application fees, by removing the occupations tax, in accordance with the repeal of Texas Occupations Code, §153.053 by House Bill 7, 84th Legislature, Regular Session (2015). The amendments further add language stating that for the license types that confer the authority to prescribe controlled substances and access the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code, the Board shall charge an additional reasonable and necessary fee sufficient to cover the Board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the drug monitoring program, with the fee amount being calculated in accordance with the appropriation match amount assigned to the Board under Article

IX, §18.55 of House Bill 1, 84th Legislature, Regular Session (2015).

The amendments to §175.2, decreases physician registration and renewal fees, by removing the occupations tax, in accordance with the repeal of Texas Occupations Code, §153.053 by House Bill 7, 84th Legislature, Regular Session (2015). The amendments further add language stating that for the license types that confer the authority to prescribe controlled substances and access the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code, the Board shall charge an additional reasonable and necessary fee sufficient to cover the Board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the drug monitoring program, with the fee amount being calculated in accordance with the appropriation match amount assigned to the Board under Article IX, §18.55 of House Bill 1, 84th Legislature, Regular Session (2015).

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to adjust fees so as to enable the agency to carry out its statutory mandates related to individuals under its jurisdiction.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also proposed under Texas Occupations Code Annotated, §156.001; House Bill 7, Senate Bill 195, and House Bill 1, 84th Legislature, Regular Session (2015).

No other statutes, articles or codes are affected by this proposal.

*§175.1. Application and Administrative Fees.*

The board shall charge the following fees for processing an application for a license or permit:

(1) Physician Licenses:

- (A) Full physician license--\$817 [~~\$1,017~~].
- (B) Out-of-State Telemedicine license--\$817 [~~\$1,017~~].
- (C) Administrative medicine license--\$817 [~~\$1,017~~].
- (D) Distinguished Professor Temporary License--\$817 [~~\$1,017~~].
- (E) Conceded Eminence--\$817 [~~\$1,017~~].
- (F) Reissuance of license following revocation--\$817 [~~\$1,017~~].
- (G) Temporary license:

- (i) State health agency--\$50.
- (ii) Visiting physician--\$-0-
- (iii) Visiting professor--\$167.
- (iv) National Health Service Corps--\$-0-
- (v) Faculty temporary license--\$552 [\$752].
- (vi) Postgraduate Research Temporary License--\$-0-
- (vii) Provisional license--\$107.

(H) Licenses and Permits relating to Graduate Medical Education:

- (i) Initial physician in training permit--\$212.
- (ii) Physician in training permit for program transfer--\$141.
- (iii) Evaluation or re-evaluation of postgraduate training program--\$250.
- (iv) Physician in training permit for applicants performing rotations in Texas--\$131.

(I) In accordance with §554.006 of the Texas Occupations Code, for those physician license types that confer the authority to prescribe controlled substances and access the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code, the Board shall charge an additional reasonable and necessary fee sufficient to cover the Board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the drug monitoring program. The fee amount will be calculated in accordance with the appropriation match amount assigned to the Board under Article IX, §18.55 of House Bill 1, 84th Legislature, Regular Session (2015).

(2) Physician Assistants:

- (A) Physician assistant license--\$220.
- (B) Reissuance of license following revocation--\$220.
- (C) Temporary license--\$107.

(D) In accordance with §554.006 of the Texas Occupations Code, the Board shall charge an additional reasonable and necessary fee sufficient to cover the Board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code. The fee amount will be calculated in accordance with the appropriation match amount assigned to the Board under Article IX, §18.55 of House Bill 1, 84th Legislature, Regular Session (2015).

(3) Acupuncturists/Acudetox Specialists/Continuing Education Providers:

- (A) Acupuncture licensure--\$320.
- (B) Temporary license for an acupuncturist--\$107.
- (C) Acupuncturist distinguished professor temporary license--\$50.
- (D) Acudetox specialist certification--\$52.
- (E) Continuing acupuncture education provider--\$50.
- (F) Review of a continuing acupuncture education course--\$25.

(G) Review of continuing acudetox acupuncture education courses--\$50.

(4) Non-Certified Radiologic Technician permit--\$130.50.

(5) Non-Profit Health Organization initial certification--\$2,500.

(6) Surgical Assistants:

(A) Surgical assistant licensure--\$315.

(B) Temporary license--\$50.

(7) Criminal History Evaluation Letter--\$100.

(8) Certifying board evaluation--\$200.

(9) Physician/Physician Assistant Jointly-Owned Entity Annual Report--\$18.

§175.2. *Registration and Renewal Fees.*

The board shall charge the following fees to continue licenses and permits in effect:

(1) Physician Registration Permits:

(A) Initial biennial permit--\$456 [\$856].

(B) Subsequent biennial permit--\$452 [\$852].

(C) Additional biennial registration fee for office-based anesthesia--\$210.

(D) In accordance with §554.006 of the Texas Occupations Code, for those physician license types that confer the authority to prescribe controlled substances and access the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code, the Board shall charge an additional reasonable and necessary fee sufficient to cover the Board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the drug monitoring program. The fee amount will be calculated in accordance with the appropriation match amount assigned to the Board under Article IX, §18.55 of House Bill 1, 84th Legislature, Regular Session (2015).

(2) Physician Assistant Registration Permits:

(A) Initial annual permit--\$272.50.

(B) Subsequent annual permit--\$268.50.

(C) In accordance with §554.006 of the Texas Occupations Code, the Board shall charge an additional reasonable and necessary fee sufficient to cover the Board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code. The fee amount will be calculated in accordance with the appropriation match amount assigned to the Board under Article IX, §18.55 of House Bill 1, 84th Legislature, Regular Session (2015).

(3) Acupuncturists/Acudetox Specialists Registration Permits:

(A) Initial annual permit for acupuncturist--\$337.50.

(B) Subsequent annual permit for acupuncturist--\$333.50.

(C) Annual renewal for acudetox specialist certification--\$87.50.

(4) Non-Certified Radiologic Technician permit annual renewal--\$130.50.

(5) Non-Profit Health Organization biennial recertification--\$1,125.

(6) Surgical Assistants registration permits:

(A) Initial biennial permit--\$561.

(B) Subsequent biennial permit--\$557.

(7) Certifying board evaluation renewal--\$200.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Mari Robinson, J.D.

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



## CHAPTER 190. DISCIPLINARY GUIDELINES

The Texas Medical Board (Board) proposes amendments to §190.8, concerning Violation Guidelines and §190.14, concerning Disciplinary Sanction Guidelines.

The amendment to §190.8(2) adds subparagraph (U), providing that unprofessional and dishonorable conduct likely to deceive, defraud, or injure the public within the meaning of Texas Occupations Code, §164.052(a)(5) and §164.053(a)(1) includes, but is not limited to a physician's commission of a non-criminal act that violates any state or federal law, if the act is connected with the physician's practice of medicine.

The amendment to §190.14 revises the graphic table in 22 TAC §190.14(9) to update the range and scope of sanctions for certain violations of the Medical Practice Act.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to clarify that non-criminal acts violating state or federal laws provide a basis for disciplinary action by the Board under Texas Occupations Code §164.052(a)(5) and §164.053(a)(1) and to better ensure consistency when the Board takes disciplinary action against licensees.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

## SUBCHAPTER B. VIOLATION GUIDELINES

### 22 TAC §190.8

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: gov-

ern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also proposed under the authority of Texas Occupations Code Annotated, Chapter 164.

No other statutes, articles or codes are affected by this proposal.

*§190.8. Violation Guidelines.*

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) (No change.)

(2) Unprofessional and Dishonorable Conduct. Unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes, but is not limited to:

(A) - (T) (No change.)

(U) commission of a non-criminal act that violates any state or federal law, if the act is connected with the physician's practice of medicine.

(3) - (8) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Mari Robinson, J.D.

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



## SUBCHAPTER C. SANCTION GUIDELINES

### 22 TAC §190.14

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also proposed under the authority of Texas Occupations Code Annotated, Chapter 164.

No other statutes, articles or codes are affected by this proposal.

*§190.14. Disciplinary Sanction Guidelines.*

These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Medical Practice Act. The ultimate purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) - (8) (No change.)

(9) The following standard sanctions shall apply to violations of the Act:

Figure: 22 TAC §190.14(9)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Mari Robinson, J.D.

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Texas Medical Board

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 51. EXECUTIVE

##### SUBCHAPTER H. GENERAL PLAN FOR PRESCRIBED BURNING ON TPWD LANDS

###### 31 TAC §51.170

The Texas Parks and Wildlife Department (the department) proposes new §51.170, concerning General Plan for Prescribed Burning on TPWD Lands. The proposed new plan would implement the provisions of House Bill (H.B.) 801, enacted by the 84th Texas Legislature, which added new Subchapter M to Chapter 11 of the Parks and Wildlife Code. Section 11.353, as added by H.B. 801, requires the Parks and Wildlife Commission to adopt by rule and implement a general plan for the use of beneficial prescribed burns in the management of department land.

Various management practices can be applied to any tract of land to improve its ecological health. An excellent tool for ecological management is prescribed fire. The department employs prescribed burning as a management tool on many state parks, natural areas, and wildlife management areas to improve wildlife habitat and species diversity. Disturbances such as fire are normal events in nature that interrupt plant growth patterns to create plant diversity and varying stages of plant growth. Such a variety is vital to many wild animals, providing food and cover components necessary for their continued existence. Fire disturbance plays a major role in the ecology of most wildlife species and ecological communities. Because fire is otherwise controlled in today's landscape, fire for ecological management must be prescribed. A good prescribed burn creates a mosaic of burned and unburned vegetation that stimulates new growth for the future while retaining adequate cover for the present. The patchy result of such a burn intersperses a variety of plant species and cover types, increasing floristic diversity and meeting the needs of wildlife. The ideal approach to prescribed burning for habitat improvement is to divide an area into burn units and burn a certain amount each year, using fire at different seasons, primarily from late summer through early spring. Most, if not all, prescribed burning on department lands occurs on either state park land (under the purview of the department's State Parks Division) or on wildlife management areas (under the purview of the department's Wildlife Division).

Under the provisions of H.B. 801, prescribed burns conducted by the department on state land managed by the department must be conducted according to a general prescribed burn plan that meets or exceeds the standards for prescribed burns established in Natural Resources Code, §153.047. The provisions of H.B. 801 also establish additional site-specific burn plan and notification requirements.

The department has maintained a written Prescribed Fire Policy since 2002. The department has amended the current Prescribed Fire Policy to comply with the requirements of H.B. 801. The resulting document is now designated as the department's General Prescribed Burn Plan (Plan), to meet the requirements of H.B. 801 and the standards for a prescribed burn set out in Natural Resources Code, §153.047. The proposed new rule would adopt the new General Prescribed Burn Plan by reference.

The Plan sets forth the primary purpose of prescribed burning on department lands, which is to reintroduce fire as an ecological process and simulate the effects of natural fire events. The application of fire fulfills numerous management objectives, including reduction of excessive fuel loads, encouragement of herbaceous species, increase of available browse, control of invasive species, improved species diversity and richness, and facilitation of the long-term objectives for natural habitat and community restoration and maintenance. Prescribed burns on TPWD lands will be conducted in association with these management objectives and/or other research endeavors in order to document the long-term effects of this practice on habitat quality or habitat restoration.

The Plan also adopts the Incident Command System (ICS) and firefighting standards set forth by the National Wildfire Coordinating Group (NWCG) as the standard operating procedure for all fire management activities on department lands (with exceptions) and establishes training and fitness requirements for department staff who participate in fire activities. All department personnel participating in fire activities are required to have completed the minimum training requirements for a Fire Fighter Type Two as described in the National Incident Management System (NIMS) Wildland Fire Qualifications System Guide, PMS 310-1. Department staff leading a burn must meet or exceed the training and experience requirements of the Texas Prescribed Burning Board. Additionally, all personnel participating in wildland fire operations must be screened annually for physical fitness according to the Wildland Firefighter Medical Standards Program adopted by the NWCG.

The Plan sets forth the planning and notification requirements to be followed by the department for all prescribed burning activities on state-owned lands. House Bill 801 added new §11.353, which requires a site-specific burn plan to be prepared and approved by a person designated by the department's Executive Director to review prescribed burn plans. Therefore, the Plan requires a site-specific prescribed burn plan to be completed and approved by staff as designated by the Executive Director (to be established in the operating plan of the responsible division) prior to implementing a prescribed burn.

Section 11.353 also requires each site-specific plan to include the planned start and end dates of the prescribed burn; a map of the designated burn area (including the location of any utility infrastructure within the designated burn area); the names and contact numbers for the prescribed burn manager, the nearest fire departments or emergency service providers, and all landowners whose property neighbors the designated burn area; and written documentation that applicable prescribed burn noti-



fication and approval requirements of the Texas Commission on Environmental Quality (TCEQ) have been met.

In addition, §11.354 requires the department to provide adequate advance notice of the department's intent to conduct a prescribed burn to each neighboring landowner and appropriate local officials in the vicinity of the designated burn area, including water utility officials with water facilities within two miles of the prescribed burn. The landowner's notice must include the planned start and end dates of the prescribed burn; any safety precautions the landowner should take to ensure the safety of the landowner's property before, during, and after the burn; a map of the prescribed burn area, including the location of any utility infrastructure within the designated burn area; the methods proposed for use in conducting the burn; and contact information for the prescribed burn manager and the department. Section §11.354 also requires the department to publish advance notice of a planned prescribed burn in a newspaper of general circulation in the county or counties in which the burn will be conducted.

The Plan's notification provisions specifically mandate that the department provide notice of the intent to conduct a prescribed burn to neighboring landowners, local and state officials, and the community at large. The notice to neighboring landowners must include the planned start and end dates of the prescribed burn; any safety precautions the landowner should take to ensure the safety of the landowner's property before, during, and after the burn; a map of the prescribed burn area, including the location of any utility infrastructure within prescribed burn area; the methods proposed for use in conducting the burn; and contact information for the prescribed burn manager or site manager. The Plan also requires the required notification of state officials to include city or county emergency services dispatch centers; local fire departments; water utility officials with water facilities within a two mile radius of the prescribed burn area, owners of any utility infrastructure within the prescribed burn area; and other parties identified in the division's operating procedures or the site-specific prescribed burn plan. In addition, the Plan requires the department to notify the Texas Commission on Environmental Quality (TCEQ) and obtain applicable approval documentation in writing as required by 30 TAC §§111.201 - 111.221. The Plan further stipulates that the public notification to the community at large shall be published or broadcast in a newspaper of general circulation in the county or counties in the burn will be conducted. Additional public outreach and notification may be defined in the division's operating procedures or in the site-specific prescribed burn

The provisions of H.B. 801 require the Plan to include site-specific prescribed burn plans containing a description of the project area (including fuels and any potential hazards); the purpose and objective of burn; pre-burn notifications, burn prescription parameters, and expected fire behavior; pre-burn considerations and preparation requirements; ignition and holding strategies; required staffing, equipment, and contingency resources; smoke management, contingency plan for escapes; mop up plan; and maps including individual burn units, pre-burn actions, and access routes for contingency actions. The Plan also stipulates that prescribed burns shall be implemented only when there is an approved prescribed burn plan, the necessary personnel and equipment resources identified in the approved plan are available on the burn site, and the prescription conditions can be met.

The Plan prescribes the process for implementing a prescribed burn, requiring each burn manager to be responsible for ensuring that all required notifications have been completed; all

pre-burn and contingency measures outlined in the prescribed burn plan are complete; that adequate equipment is present and that personal protective gear is utilized; that qualified personnel on site for the burn are trained to levels commensurate with their level of responsibility on the burn crew and for that specific operation; and that the burn crew has been briefed on objectives, fuels, expected weather and fire behavior, and appropriate safety precautions. The Plan further requires that burning be conducted only when observed or forecasted environmental conditions are within the parameters specified in the site-specific plan and that all infrastructure and utilities are protected (i.e., electrical transformers, electrical conduit, phone and fiber optic lines, oil and gas wells, barns and buildings, etc.).

The Plan also stipulates the limitation of prescribed burning to those periods when atmospheric and wind conditions are within acceptable guidelines (and may be locally specific), which shall be identified in the plan in order to minimize risks associated with the potential effects of smoke on the local population and resources and the development of a smoke management plan (including plotting the expected direction of the smoke plume, identifying all smoke sensitive areas in the vicinity and their distances from the burn unit), identifying critical smoke-sensitive areas (public roads and airports must be considered at risk for smoke, and appropriate precautions must be taken to minimize risks to traffic), and minimizing the risk to adjacent properties and populations). Burn managers will coordinate with county officials in determining the appropriateness of burning during county burn bans and the approval of the appropriate division director must be obtained to conduct a prescribed burn during a burn ban. No fires will be ignited if the Texas Interagency Coordination Center (TICC) has rated the "TFS Regional Fire Risk Level" at a "5-extreme."

Finally, the Plan describes the emergency response preparedness measures that department staff are expected to employ and follow and the parameters for burning brush piles or debris on agency lands.

The complete Plan is also published in the In Addition section of this issue of the *Texas Register*, and may also be viewed/downloaded on the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov).

Justin Dreibelbis, Director of the Private Lands and Public Hunting Program, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the proposed rule.

Mr. Dreibelbis also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the implementation by rule of the general prescribed burn plan required by H.B. 801. As described in more detail above, there are many benefits to land and wildlife from prescribed fire. The rule will help ensure that prescribed fire is administered in a safe, appropriate and transparent manner.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse

economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, commission considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses, microbusinesses, or persons required to comply with the rule as proposed. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to [http://www.tpwd.state.tx.us/business/feedback/public\\_comment/](http://www.tpwd.state.tx.us/business/feedback/public_comment/) or Justin Dreibelbis, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4395 (e-mail: justin.dreibelbis@tpwd.texas.gov).

The new rule is proposed under the authority House Bill 801, 84th Texas Legislature (Regular Session), which requires the commission to adopt by rule and implement a general plan for the use of beneficial prescribed burns in the management of department land.

The proposed new rule affects Parks and Wildlife Code, Chapter 11.

§51.170. General Plan for Prescribed Burning on TPWD Lands.

(a) It is the intent of the department that the department's General Plan for Prescribed Burning on TPWD Lands comply with the requirements of the prescribed burn plan required by Parks and Wildlife Code, §11.351.

(b) The department's General Plan for Prescribed Burning on TPWD Lands is adopted by reference.

(c) The department will maintain the current version of the General Plan for Prescribed Burning on TPWD Lands on the department's website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov) along with the contact information of appropriate department staff for the benefit of interested parties.

(d) The department will publish notice in the *Texas Register* and seek input from interested parties when major modifications to the General Plan for Prescribed Burning on TPWD Lands (such as changes in procedures or notification processes) are contemplated. Public notice of an opportunity to comment will be provided at least 30 days prior to the effective date of any changes to the plan. The public notice will describe the proposed modifications and the reasons for the modifications, and how comments on the proposed modifications may be submitted to the department.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4395



## CHAPTER 53. FINANCE

### SUBCHAPTER A. FEES

#### DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

##### 31 TAC §53.5

The Texas Parks and Wildlife Department proposes an amendment to §53.5, concerning Recreational Hunting License, Stamps, and Tags. The proposed amendment would increase the fee for the Federal Migratory Bird Hunting and Conservation Stamp, commonly referred to as the "federal duck stamp," to reflect federal action and increase the fee charged by the department to recover the administrative expenses of selling the stamp.

Under federal law, no person 16 years of age or older may hunt waterfowl in the United States without having acquired a federal duck stamp. For many years the federal duck stamp had to be physically purchased at certain federal offices and department law enforcement offices. In 2008, the U.S. Fish and Wildlife Service (Service) made it possible for individual states to enter into agreements with the federal government to sell the federal duck stamp electronically (Electronic Duck Stamp Act of 2005, P.L. 109 - 266). To provide the convenience of one-stop shopping for waterfowl hunters in Texas, the department entered into an agreement with the federal government to sell the federal duck stamp through the department's license deputies and website beginning with the 2007 - 2008 license year at a cost of \$17, which represented the \$15 federal stamp fee, a \$1 federal fulfillment fee for the cost of mailing a physical stamp to the customer, and a \$1 fee to cover the department's transaction costs and commissions to license deputies.

With the passage of the Federal Duck Stamp Act of 2014 (P.L. 113 - 264), the United States Congress amended the Migratory Bird Hunting and Conservation Stamp Act to increase the price of the duck stamp to \$25. The Service has also increased the federal fulfillment fee to \$1.50. These fees are imposed by the federal government and are not subject to change by the state. The current \$1 fee charged by the department to offset transaction costs and license deputy commissions has been insufficient to recover the department's costs for providing those services. The department's third-party license vendor charges a per-transaction fee of \$0.67 and the department pays license agents a commission of 5% of the purchase value per transaction. Using Fiscal Year (FY) 2014 sales data, the department estimates a loss of approximately \$153,497 in FY2016 unless the transaction/commission fee is increased. Therefore, the proposed amendment would replace the current federal duck stamp fee of \$17 with "all applicable federal fees, plus \$2.50" to reflect the federal stamp fee increase (to \$25), the federal fulfillment fee increase (to \$1.50), and a department transaction/commission fee

increase (to \$2.50). Therefore, the total cost of acquiring a federal duck stamp in Texas would be \$29.

Mr. Justin Halvorsen, Revenue Director, has determined that for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to state government as a result of enforcing or administering the rule.

The proposed transaction/commission fee is expected to result in annual revenue to the department of approximately \$77,521 per year. This figure was derived by multiplying the FY2014 sales volume (161,000) by the \$2.50 proposed in this rulemaking for a total of \$402,500, and then subtracting the third-party vendor transaction fee of \$0.67 per transaction (\$107,870 in total) and the estimated 5% license agent commission fees of \$217,109. The \$217,109 in license agent commission fees was determined by TPWD estimating, based on previous sales, that approximately 93% (149,730) of the duck stamps will be sold through retail agents with a commission fee of approximately \$1.45 per stamp (5% of \$29). The remaining 7% of sales (11,270) are via the department's website and therefore not subject to agent commission fees. The \$77,521 in revenue will help defray the department's costs of issuing this license, including staff time required for reporting and issuing the licenses. It should also be noted that the above calculation is based on the full transaction fee of \$2.50. Since the current transaction fee is \$1.00, the department would only realize additional revenue based on the \$1.50/transaction increase.

Although the federal duck stamp and federal fulfillment fees will increase by a total of \$10.50, those fees are imposed by the federal government, not the department, and therefore are not applicable to this analysis because the state retains none of the federal revenue.

There will be no fiscal implications to other units of state or local governments as a result of enforcing or administering the rule.

Mr. Halvorsen also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the availability of the federal duck stamp at approximately 1,800 retail outlets and department offices.

There will be an adverse economic effect on persons required to comply with the rule as proposed. A person who purchases a federal duck stamp will pay \$1.50 more in state fees per duck stamp compared to last year.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses or microbusinesses be-

cause the proposed rule will not directly affect small businesses or micro-businesses. The proposed rule affects the regulation of recreational stamp privileges that allow individual persons to pursue and harvest migratory game birds. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Michael Hobson, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4477 (e-mail: [michael.hobson@tpwd.texas.gov](mailto:michael.hobson@tpwd.texas.gov)) or via the department website at [http://tpwd.texas.gov/business/feedback/public\\_comment/](http://tpwd.texas.gov/business/feedback/public_comment/).

The amendment is proposed under Parks and Wildlife Code, §12.701, which authorizes the issuance of a license, stamp, permit, or tag by a license deputy; §12.702(a), which authorizes the department to contract with a county clerk or another person to issue and collect money for a license, stamp, permit, tag, or other similar item as a license deputy; §12.702(b), which authorizes the commission to by rule set collection and issuance fees for a license, stamp, tag, permit, or other similar item issued under any chapter of the Parks and Wildlife Code; §12.703(a), which authorizes the department to issue a license, stamp, tag, permit, or another similar item authorized by the parks and Wildlife Code or federal law through the use of automated equipment and a point-of-sale system; and §12.703(c), which authorizes the commission to establish by rule the amount of compensation for a point-of-sale entity, including an amount to be retained by the entity from the fee collected for each item issued by the entity.

The proposed amendment affects Parks and Wildlife Code, Chapter 12.

§53.5. *Recreational Hunting Licenses, Stamps, and Tags.*

(a) - (b) (No change.)

(c) Hunting stamps and tags:

(1) - (3) (No change.)

(4) Federal Migratory Bird Hunting and Conservation Stamp--all applicable federal fees, plus \$2.50 [\$17].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Ann Bright  
General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



## CHAPTER 57. FISHERIES

## SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

### 31 TAC §57.117, §57.118

The Texas Parks and Wildlife Department (the department) proposes amendments to §57.117 and §57.118, concerning Harmful or Potentially Harmful Fish, Shellfish, and Aquatic Plants. The proposed amendments would implement the provisions of Senate Bill (S.B.) 1204, enacted by the 84th Texas Legislature, which amended Parks and Wildlife Code, Chapter 66, by adding new §66.007(c-1), requiring the Parks and Wildlife Commission to waive by rule the initial and renewal fees for a permit to possess harmful or potentially harmful fish, shellfish, and aquatic plants ("exotic species permit") if the permit or permit renewal "is requested by a public school to establish and maintain an educational program that will give students experience with a sustainable system of agriculture that mixes aquaculture and hydroponics." S.B. 1204 also provides that to "qualify for the fee waiver, the school must submit an application to the department showing that the school's program meets the department's requirements, including requirements for supervision, handling of the fish species, and control of wastes." Thus, the department will require applicants for a permit fee waiver to demonstrate that the school's program meets the department's requirements for supervision, handling of fish species, and control of wastes.

The department also notes that its rules (31 TAC §57.113(f)) governing permits to possess harmful or potentially harmful fish, shellfish, and aquatic plants authorize permit holders to possess, propagate, transport and sell only triploid grass carp, bighead carp, blue tilapia (*Oreochromis aureus*), Mozambique tilapia (*O. mossambicus*), Nile tilapia (*O. niloticus*), or hybrids between the three tilapia species, unless otherwise provided by the conditions of the permit. Therefore, the proposed amendment would authorize permit issuance to schools only for the possession, propagation, transport, and sale of the species listed in §57.113(f).

Monica McGarrity, Aquatic Invasive Species Biologist, has determined that for each of the first five years that the rules as proposed are effect, there will be no fiscal implications to state government as a result of enforcing or administering the proposed rules separate from the fiscal impacts of the legislation.

There will be no fiscal implications for other units of state or local governments as a result of enforcing or administering the proposed rules.

Ms. McGarrity also has determined that for each of the first five years the rules as proposed rule are effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the ability of public school students to gain experience with a sustainable system of agriculture that mixes aquaculture and hydroponics.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose,

commission considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses, microbusinesses, or persons required to comply with the rules as proposed. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to [http://www.tpwd.state.tx.us/business/feedback/public\\_comment/](http://www.tpwd.state.tx.us/business/feedback/public_comment/) or Monica McGarrity, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8292; email: [monica.mcgarrrity@tpwd.texas.gov](mailto:monica.mcgarrrity@tpwd.texas.gov).

The amendments are proposed under the authority Senate Bill 1204, 84th Texas Legislature (Regular Session), which requires the commission to waive by rule the initial and renewal fees for an exotic species permit if the permit or permit renewal is requested by a public school to establish and maintain an educational program that will give students experience with a sustainable system of agriculture that mixes aquaculture and hydroponics.

The proposed amendments affect Parks and Wildlife Code, Chapter 66.

#### §57.117 *Exotic Species Permit: Application Requirements.*

- (a) To be considered for an exotic species permit, the applicant shall:
  - (1) meet one or more of the following criteria:
    - (A) possess a valid aquaculture license;
    - (B) possess a valid permit from the Texas Commission on Environmental Quality authorizing operation of a wastewater treatment facility;
    - (C) possess a department-approved research proposal involving use of harmful or potentially harmful exotic fish, shellfish or aquatic plants;
    - (D) operate a public aquarium approved for display of harmful or potentially harmful exotic fish, shellfish or aquatic plants; or
    - (E) operate a facility approved by the department for the possession and propagation of harmful or potentially harmful exotic aquatic plants;
  - (2) complete and submit an initial exotic species permit application on a form provided by the department;
  - (3) submit an accurate-to-scale plat of the aquaculture facility specifically including, but not limited to, location of:

(A) all private facilities and owner's name and physical address including a designation on the plat of all private facilities which will be used for possession of harmful or potentially harmful exotic species;

(B) all structures which drain private facilities;

(C) all points at which private facility effluent is discharged from the private facilities or the aquaculture facility;

(D) all structures designed to prevent escapement of harmful or potentially harmful exotic species from the aquaculture facility;

(E) any vats, raceways, or other structures to be used in holding harmful or potentially harmful exotic species;

(4) demonstrate to the department that an existing aquaculture facility, private facility or wastewater treatment facility meets requirements of §57.129 of this title (relating to Exotic Species Permit: Private Facility Criteria);

(5) remit to the department all applicable fees except that fees shall be waived for a public school meeting the conditions established in Parks and Wildlife Code, §66.007(c-1).

(b) Applicants for an exotic species permit for culture of harmful or potentially harmful exotic shellfish must meet all exotic species permit application requirements and requirements for disease free certification as listed in §57.114 of this title (relating to Health Certification of Harmful or Potentially Harmful Exotic Shellfish).

(c) An applicant for an exotic species permit shall provide upon request from the department documentation necessary to identify any harmful or potentially harmful exotic species and confirm the source of origin for the species for which a permit is sought.

(d) An applicant for an exotic species permit whose facility is located within the harmful or potentially harmful exotic species exclusion zone as defined in §57.111 of this title (relating to Definitions) must submit an emergency plan to the department for review and approval. The plan shall include measures sufficient to prevent release or escapement of permitted harmful or potentially harmful exotic species into public water during a natural catastrophe (such as a hurricane or flood).

*§57.118 Exotic Species Permit Issuance.*

(a) The department may issue an exotic species permit only to:

(1) an aquaculturist and only for species listed in §57.113(f), (g), and (m) of this title (relating to Exceptions);

(2) a wastewater treatment facility operator;

(3) department-approved research programs; [øf]

(4) a public aquarium for display purposes only; or[-]

(5) a public school meeting the conditions established in Parks and Wildlife Code, §66.007(c-1) and only for species listed in §57.113(f) of this title (relating to Exceptions).

(b) The department may issue an exotic species permit upon a finding by the department that:

(1) all application requirements as set out in §57.117 of this title (relating to Exotic Species Permit: Application Requirements) have been met;

(2) the aquaculture facility operated by the applicant and named in the permit meets or will meet the design criteria listed in §57.129 of this title (relating to Exotic Species Permit: Private Facility Criteria);

(3) the applicant has complied with all provisions of the Parks and Wildlife Code, §§66.007, 66.0072, and 66.015, and this subchapter during the one-year period preceding the date of application.

(c) Permits issued for aquaculture facilities, private facilities or wastewater treatment facilities under construction shall not authorize possession of harmful or potentially harmful exotic fish, shellfish or aquatic plants until such time as the department has certified that the aquaculture facility, private facilities or wastewater treatment facility as-built meets the requirements in §57.129 of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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CHAPTER 65. WILDLIFE  
SUBCHAPTER A. STATEWIDE HUNTING  
PROCLAMATION  
DIVISION 1. GENERAL PROVISIONS

**31 TAC §65.29**

The Texas Parks and Wildlife Department (the department) proposes new §65.29, concerning Managed Lands Deer Program (MLDP). The new section is intended to replace the current Managed Lands Deer Permit and Landowner Assisted Managed Permit System (LAMPS) programs, currently contained in §§65.26, 65.34, and 65.28 of this subchapter, respectively.

The current MLDP program has been in effect since 1996 for white-tailed deer and 2005 for mule deer and has been a very successful vehicle for encouraging deer harvest, deer management, and habitat conservation. In 2014, approximately 10,000 properties encompassing 24 million acres were participating in the program. The LAMPS program was created in 1993 to provide flexibility to landowners and land managers with respect to the harvest of antlerless deer, primarily in the eastern third of Texas. Substantial growth in the MLDP program during the last 18 years, the accretion of changes to program rules over time, and requests for modernization by staff and program participants have prompted the department to explore options to simplify both programs and create new administrative efficiencies.

Proposed new §65.29(a) would set forth the meanings of various specialized words and terms used throughout the new rule, which is necessary to provide clarity of intent for purposes of compliance and enforcement.

Proposed new §65.29(a)(1) would define "landowner" as "any person who has an ownership interest in a tract of land." The definition is necessary because enrollment in the MLDP can only be done by a landowner or a landowner's authorized agent and a legal standard of ownership must be established.

Proposed new §65.29(a)(2) would define "MLDP" as "the Managed Lands Deer Program" established by the subchapter as

consisting of two enrollment options, the Harvest Option (HO) and the Conservation Option (CO). The definition is necessary to provide acronyms for easy reference.

Proposed new §65.29(a)(3) would define "MLDP tag" as "a tag issued by the department to a participant in any option under this section." Under the provisions of the proposed new rule, the department would establish a harvest quota for properties under the HO or the CO and issue tags for the harvest of deer on those properties. The definition is necessary to clearly establish the fact that no tag other than a tag issued under the proposed new section meets the requirements of the proposed new section.

Proposed new §65.29(a)(4) would define "program participant" as "a landowner or a landowner's authorized agent who is enrolled in the MLDP." Under the proposed new rule, only a landowner or landowner's authorized agent are eligible for enrollment in the MLDP; the term "program participant" is convenient shorthand that eliminates the need to repeat an unwieldy phrase throughout the rules. In addition, the proposed rules provide that only a landowner (and not a landowner's agent) is authorized to take certain actions. Therefore, the term "program participant" is also used to distinguish between a landowner's authority and the authority that may be exercised by a landowner or the landowner's agent (i.e. a "program participant").

Proposed new §65.29(a)(5) would define "resource management unit (RMU)" as "an area of the state designated by the department on the basis of shared characteristics such as soil types, vegetation types, precipitation, land use practices, and deer densities." The department collects population and harvest data at the RMU level to assess the effect of harvest regulations. Under the HO, a harvest recommendation would be automatically calculated by the department using RMU data and coarse data provided by the program participant.

Proposed new §65.29(a)(6) would define "unbranched antlered deer" as "a buck deer having at least one antler with no more than one antler point." The current MLDP rules allow for a harvest quota of buck deer and/or antlerless deer. The proposed new section would make a distinction between buck deer that have two forked antlers and buck deer that have at least one antler with no forks. Allowing additional harvest opportunity for unbranched antlered deer is intended to help landowners and land managers achieve their harvest management goals without adversely impacting the resource. The definition is necessary to stratify the harvest of buck deer in the HO.

Proposed new §65.29(a)(7) would define "Wildlife Management Plan (WMP)" as "a written document on a form furnished or approved by the department that addresses habitat and population and management recommendations, associated data, and data collection methodologies." Under the proposed new rules, participation in the CO would be contingent on a department-approved management plan. The definition is necessary to broadly outline the components of a WMP for purposes of program administration and compliance.

Proposed new §65.29(a)(8) would define "Wildlife Management Associations and Cooperatives" as "a group of landowners who have mutually agreed in writing to act collectively to improve wildlife habitat and populations on their tracts of land." For many years the department has allowed groups of landowners who because of small acreage or land use would not qualify for MLDP issuance to pool their acreage in order to qualify. The proposed new rule would also allow this practice, but a definition is neces-

sary to establish a formal requirement that participation landowners agree in writing to membership.

Proposed new §65.29(b) would set forth general provisions that are common to both the HO and the CO.

Proposed new §65.29(b)(1) would establish the conditions for enrollment in the HO and CO, respectively. The HO is an automated tag delivery system; landowners would access the department's web-based portal, complete an online application, provide requested acreage and other data specific to the property, and the department would then calculate the number of tags to be issued. Therefore, a prospective property and landowner would be considered enrolled at the point the department approves the electronic application. For the CO, the application would also be made online, but a WMP would be required. Thus, a prospective property and landowner would be considered enrolled when the department has approved the application and the WMP.

Proposed new §65.29(b)(2) would allow a landowner to appoint a person to act as the landowner's authorized agent for purposes of program participation by completing a department-approved form. Under current rules, the department allows landowners to appoint an authorized agent to act on the landowner's behalf, which allows land managers, ranch employees, and private consultants to make management decisions in a quick and efficient manner. The proposed new rule would continue this practice, but require the authorization to be documented, which is necessary to ensure that a person purporting to be an authorized agent is actually authorized by the landowner to do so.

Proposed new §65.29(b)(3) would stipulate that MLDP tags be issued to a program participant, which is necessary to specifically establish that the department does not issue tags directly to hunters.

Proposed new §65.29(b)(4) would specify that MLDP tags are valid only on the specific enrolled tract for which they are issued, with the exception of aggregate acreages in the HO. Because the MLDP is a program that furnishes a property-driven harvest quota (as opposed to the essentially open-ended harvest possible under county regulation provided in §65.42 of this title, concerning Deer), it is logical that the use of MLDP tags be restricted to the property for which they were issued. The exception is for aggregate acreages in the HO, where the department would allow multiple acreages to be combined, in effect, into a single tract of land for purposes of tag issuance, provided the tracts are contiguous. The tags could then be utilized on any of the properties.

Proposed new §65.29(b)(5) would exempt an enrolled tract of land from the applicability of personal bag limits, means and method restrictions for archery-only and muzzleloader-only seasons, and archery stamp requirements. When the current MLDP program was created, the department wanted to offer landowners and land managers the most flexibility possible to achieve the management goals jointly determined by the department and landowner; thus, the current rule exempts MLDP properties from the personal bag limits established for each county under §65.42, the means and methods requirement for the archery-only and muzzleloader-only seasons, and the stamp requirements for the archery-only season. Because the department establishes a harvest quota for the property (versus the county regulation under §65.42, which establishes a personal bag limit but does not limit how many hunters may take deer), it makes no biological difference whether one person or many persons harvest deer, provided the harvest quota is not

exceeded. Similarly, the means restriction of the archery-only (only lawful archery equipment may be used to take deer) and muzzleloader-only (only muzzleloading firearms may be used to take deer) seasons, because they do not allow the use of modern firearms (which are much more efficient harvest devices), were eliminated for MLDP properties in order to allow landowners and land managers to reduce habitat impacts by harvesting deer by firearm earlier than allowed under the county regulations. The current rule also exempts MLDP properties from the archery stamp requirement, which is necessary because the archery-only season established by §65.42 is statewide and under Parks and Wildlife Code, §43.201, it is unlawful for any person to hunt deer during a season restricted to the use of archery equipment unless an archery stamp has been purchased or the commission, by rule, has exempted a person from the archery stamp requirement. The proposed new rule would retain all of these provisions for the same reasons.

Proposed new §65.29(b)(6) would set forth MLDP tag utilization requirements. Because department rules at 31 TAC §65.10(c) exempt deer tagged in accordance with MLDP rules from other tagging requirements, it is necessary to precisely delineate the circumstances and procedures for the use of MLDP tags, which is necessary to prevent confusion as well as the unscrupulous use of MLDP tags. Therefore, the proposed new rule would require harvested deer to be immediately tagged (or taken to a location on the property to be tagged), which is necessary for department law enforcement personnel to verify that deer have been lawfully harvested and for department biologists to track compliance with harvest quotas. The proposed new paragraph also would prohibit the various permutations of inappropriate use of an MLDP tag (e.g., use of a mule deer tag on a white-tailed deer and vice versa, use of an antlerless MLDP tag to a buck deer having more than one point on both antlers, use of an unbranched antlered deer with an antlerless MLDP tag); the use of an MLDP tag or tag number more than once; and the use of an MLDP tag on a tract of land other than the tract for which the MLDP tag was issued. The MLDP program is a program that tailors harvest to specific tracts of land. It is axiomatic, then, that the harvest of deer by a program participant should precisely track the recommendations of the department. Therefore, MLDP tags are issued for specific types of deer to be harvested. To allow those tags to be used indiscriminately or interchangeably would defeat the purpose of the harvest recommendation. Similarly, the harvest quota for a property represents the total number of deer the department will allow to be harvested; allowing additional harvest by re-use of tags or tag numbers, or the use of tags issued for another property, would defeat the purpose of the program.

Proposed new §65.29(b)(7) would set forth the on-site harvest documentation requirements for program participants. The proposed new rule would require deer harvested on MLDP properties to be tagged with an MLDP tag; however, when deer are taken to a taxidermist or processor, the department must be able, if need be, to verify that the deer was lawfully harvested. To provide that ability, the proposed new rule would require a daily harvest log to be maintained on each MLDP property. The proposed new rule would require the hunter's name and hunting license number (or driver's license number, if the daily harvest log is also being used as a cold storage/processing book) to be entered into the harvest log for each deer harvested, along with the date of kill, type of deer killed, and the number of the MLDP tag affixed to the deer. The proposed new provision would allow the department to verify that a MLDP-tagged deer encountered at a

location other than where it was killed was in fact lawfully taken on the property for which the tag was issued. The proposed new rule would also require the daily harvest log to be presented to any department employee acting within the scope of official duties.

Proposed new §65.29(b)(8) would set forth the annual reporting requirements for program participants. Under current rule, MLDP cooperators report harvest and habitat data as part of the WMP that must be approved prior to tag issuance. Because the new MLDP will be an online system, the proposed new rule would require program participants to report harvest data, and in the case of CO program participants, habitat management practices, as well as any other data deemed important by the department. The proposed new provision is necessary to allow the department to gather useful population and harvest data and to verify that required habitat management practices are being performed.

Proposed new §65.29(b)(9) would specify that if an applicant does not wish to engage in program participation, the applicant must affirmatively decline program participation by September 15 via the department's online web application. The proposed new provision also would stipulate that failure to timely notify the department would result in the deer harvest on the property continuing to be subject to the MLDP regulations until the last day in February (the last day that MLDP tags are valid). When a property is in the MLDP, deer harvest cannot be conducted under the county regulations established in §65.42 and all deer must be harvested under the provisions of the MLDP regulation. Because department law enforcement personnel must know what regulations are in effect on any given property, it is imperative that a program participant who has had a change of heart notify the department prior to opening day of the archery season.

Proposed new §65.29(b)(10) would allow deer to be harvested under the county season and bag limit, provided the department is timely notified as provided by §65.29(b)(10) of the program participant's desire to cease participation in the MLDP.

Proposed new §65.29(b)(11) would allow a program participant who maintains a cold storage/processing facility to satisfy the recordkeeping requirements of Parks and Wildlife Code, §62.029, by recording the hunting license number as part of the daily harvest log required by the proposed new rule and maintaining the log for a period of two years from the date of the last entry. Under Parks and Wildlife Code, §62.029, the operator of a cold storage or processing facility must maintain a record book at the facility of game accepted by the facility and must keep the record at the facility for a period of at least one year from the last date entered in the record book. The proposed new rule would allow program participants to collect and record the information required by Parks and Wildlife Code, §62.029 as part of the daily harvest log required by the proposed new rule and would require the harvest log to be kept at the facility for at least two years following the last date entered in the record book. The department believes it is less burdensome and more efficient to allow program participants to maintain a single system of documentation, rather than two.

Proposed new §65.29(c) would set forth the specific provisions applicable to the HO and the CO.

Proposed new §65.29(c)(1) would set forth the program provisions for the HO. The HO can be thought of as a conflation of the current LAMPS program and the current Level I and II components of the MLDP programs. Whereas the current LAMPS

program is intended to help manage antlerless deer populations in the eastern third of the state and does not require a landowner to have a WMP, the current Level I and II MLDP components are statewide and require a WMP, with the Level I MLDP authorizing an antlerless-only harvest and the Level II authorizing an either-sex harvest with buck harvest by firearm limited to spike bucks during the first 35 days of tag validity. The proposed new HO would be statewide, would not require a WMP, could be structured as antlerless only or either-sex, and would restrict buck harvest by firearm during the first 35 days of tag validity to bucks having at least one antler with no more than one point (any buck could be taken by lawful archery equipment).

Proposed new §65.29(c)(1)(A) would establish an application deadline of September 1 for participation in the HO, which was selected in order to allow the department sufficient time to process applications and issue MLDP tags before the period of validity for the MLDP tags begins. Additionally, there would be no paper application process; applications would be made and processed via a web-based application.

Proposed new §65.29(c)(1)(B) would provide for the enrollment of contiguous tracts of land by multiple landowners for program participation, which is necessary because many areas of the state are characterized by numerous small acreages which by themselves are not large enough to qualify for tag issuance. Many of these areas also experience high hunting pressure and the county bag limits established under §65.42 are therefore quite conservative. Thus, for example, if the biological limit for antlerless harvest in a given RMU is calculated to be one deer per 30 acres, properties of less than 30 acres cannot qualify, leaving the landowner no option but the county regulation established under §65.42, which might allow a minimal antlerless harvest per hunter, if any. Therefore, the department wishes to provide owners of small tracts a way to bundle aggregate acreage to maximize hunting opportunity. The proposed new provision would require a single program participant to be designated to receive MLDP tags and would allow MLDP tags to be used anywhere on the combined acreage. Because the proposed new HO will be a database application that relates data uniquely to specific tracts of land enrolled in the program, aggregate acreages must be treated as a single tract for purpose of tag issuance; therefore, a single program participant must be designated to receive tags and the tags can then be utilized anywhere on the aggregate acreage.

Proposed new §65.29(c)(1)(C) would broadly delineate the components used by the department to calculate harvest quotas for properties enrolled in the HO. The department manages population and harvest data on deer populations by the RMU concept. Areas of the state that share similar soil types, vegetation types, precipitation, land use practices, and deer densities are treated as discrete units for the purpose of determining and analyzing the effectiveness of harvest regulations. The department would use survey information collected by the department in a given RMU as a baseline and then adjust the harvest quota as necessary to account for the location of a property, the size of the property, the quality and abundance of habitat on the property, and any other information deemed relevant by the department. The proposed new provision is necessary to create a biologically valid standard for managing the deer harvest on properties enrolled in the HO.

Proposed new §65.29(c)(1)(D) would set forth the period of validity for MLDP tags issued under the HO. As noted previously in this preamble, the HO can be thought of as a conflation of

the current LAMPS program and the Level I and II components of the current MLDP program. The general period of validity of MLDP tags under the HO would remain unchanged from the current MLDP program (Saturday closest to September 30 to the last day in February). Under the Level II component of the current MLDP program, buck harvest by firearm during the first 35 days of tag validity is restricted to spike bucks (any buck could be taken by lawful archery equipment). The proposed new HO would retain this basic structure, but alter the buck restriction to encompass buck deer with at least one antler having no more than one point (i.e., at least one antler is a spike), which would be called an "unbranched antlered" buck. Allowing additional harvest opportunity for unbranched antlered deer is intended to help landowners and land managers achieve their harvest management goals without adversely impacting the resource.

Proposed new §65.29(c)(1)(E) would provide that if a program participant elects to receive tag issuance for only one type of deer (buck or antlerless), then the provisions of §65.42 would govern the harvest of the other type of deer on the enrolled tract of land. Since the proposed new rule would allow program participants in the HO to customize their harvest, it is necessary to clarify that the county regulations provided in §65.42 would be in effect for all deer harvest not governed by the proposed new rule.

Proposed new §65.29(c)(2) would set forth the program provisions for the CO. The CO can be thought of as similar to the current MLDP Level III component. Under the current rule, a landowner with a department-approved WMP who agrees to perform four habitat management practices per year receives a harvest quota of buck and antlerless deer and may take or authorize the take of deer from the Saturday closest to September 30 until the last day of February by any lawful means without respect to the personal bag limits established in the county under §65.42. The proposed new CO would be similar.

Proposed new §65.29(c)(2)(A) would require a landowner or authorized agent to apply for program acceptance by June 15 of each year. Like the HO, application for enrollment in the CO would be electronic, using the department's web-based application. The June 15 deadline was selected because unlike the HO (under which tag issuance is completely automated), the CO requires harvest, population, and habitat management reporting, a WMP, and, if necessary, personal interaction with department personnel; therefore, the application deadline must be set well in advance of the period of validity of the MLDP tags in order to allow staff sufficient time to evaluate applications.

Proposed new §65.29(c)(2)(B) would set forth the minimum requirements for the WMP required by the proposed new CO, to consist of acreage and habitat information requested by the department, deer population and harvest data for each of the two years immediately preceding the year in which initial program participation is sought, and evidence satisfactory to the department that at least two department-approved habitat management practices have implemented on the tract of land during each of the two years immediately preceding application. The proposed new CO would also require, as part of the WMP, an acknowledgement that site visits by the department to assess habitat management practices on the tract of land may be conducted at the request of any department employee. Under the current MLDP rules, acceptance into the Level III component is automatic upon department approval of the WMP and landowner agreement to perform four habitat management practices per year. Level III is extremely popular, and as a result, department



biologists have found it increasingly difficult to keep pace with the demands on time created by the current rule. By offering a completely automated alternative in the form of the HO and requiring evidence of landowner commitment to habitat management (in the form of prior/continuing habitat management activities) as part of the CO, the department hopes to direct much of the current Level III tag issuance to the HO, allowing department biologists more time to work with landowners who desire more intensive management on their properties and are willing to cooperate more closely with the department as a result.

Proposed new §65.29(c)(2)(C) would stipulate that a WMP is not valid unless it has been signed by a Wildlife Division employee assigned to evaluate wildlife management plans, which is necessary to ensure that all WMPs meet a standard of quality that justifies the allocation of department resources.

Proposed new §65.29(c)(2)(D) would require the implementation of at least three habitat management practices specified in the WMP during each year of program participation. The proposed new provision preserves the requirements of the current MLDP Level III in this regard. The department intends for the CO to be a vehicle for landowners who are committed to a high level of habitat management; in exchange for performing at least three habitat management practices annually, the department would extend the most flexible tag utilization possible, allowing the harvest of any buck deer by any lawful means from the Saturday closest to September 30 until the last day in February (subject to the number of buck tags issued).

Proposed new §65.29(c)(2)(E) would prescribe the period of validity for MLDP tags under the CO (the Saturday closest to September 30 until the last day in February) and allow the harvest of any deer during that time, subject to the number of tags issued.

Proposed new §65.29(c)(2)(F) would allow the department to authorize additional harvest on any tract of land enrolled in the CO, provided the program participant furnishes survey or population data that in the opinion of the department justifies the additional harvest. The department acknowledges that unforeseen circumstances such as inclement weather might adversely affect a program participant's survey efforts, resulting in undercounting of deer; therefore, it is prudent to allow for additional tag issuance in cases that a program participant presents evidence that additional harvest is either possible or necessary. Similarly, unforeseen circumstances may make harvest and/or habitat management difficult or impossible; therefore, proposed new §65.29(c)(2)(G) would allow the department to, on a case-by-case basis, waive or defer the habitat management requirements of the proposed new CO in the event that unforeseeable developments such as floods, droughts, or other natural disasters make the attainment of recommended habitat management practices impractical or impossible.

Proposed new §65.29(c)(2)(H) would create special provisions for aggregate acreages. In many parts of Texas, landowners join forces and acreages to manage habitat and wildlife on a landscape scale. The wildlife management association cooperative is a popular example. The proposed new provisions would allow a wildlife management association or cooperative to enroll member properties in the CO under a single WMP. MLDP tags would be issued to the individual participating landowners (or their agents) and the tags would be valid only on the tract of land for which they were issued. Another form of aggregate acreage is the hunting club, in which land that is owned or leased by members is managed for habitat and hunting opportunity.

The proposed new provision would allow these types of aggregate acreages to be enrolled in the CO provided the enrolled acreages are contiguous, the program participant provides the name, address, and express consent of each landowner, and a single program participant is designated to be the recipient of the tag issuance. Because aggregate acreages such as hunt clubs are highly variable from year to year, the department proposes to administer the CO in such cases in much the same fashion as the HO. Because the department's web-based application will employ a database application that relates data uniquely to specific tracts of land enrolled in the program, aggregate acreages must be treated as a single tract for purpose of tag issuance; therefore, a single program participant must be designated to receive tags and the tags can then be utilized anywhere on the aggregate acreage.

Proposed new §65.29(c)(2)(I) would stipulate for clarity's sake that MLDP for white-tailed deer is not available in counties in which there is not an open season for white-tailed deer. The department will not open a season in a county in which the habitat is unsuitable to naturally support a population of white-tailed deer; obviously and for the same reason the department does not believe that MLDP participation should in such counties, either.

Proposed new §65.29(d) would set forth the provisions of the MLDP governing mule deer. Unlike white-tailed deer, mule deer are a fragile resource that the department manages with an extremely conservative harvest regime. For that reason, the MLDP for mule deer does not include the HO. The proposed new rule's provisions with respect to mule deer are identical to those for CO for white-tailed deer, with the exceptions of the length of tag validity and restrictions on lawful means during the first 35 days of tag validity. As noted, the department utilizes a conservative harvest regime for mule deer; no general season is longer than 17 days and antlerless deer cannot be harvested without a permit except in Brewster, Pecos, and Terrell counties, and then only by lawful archery equipment during the special archery-only open season. The current MLDP rule for mule deer (31 TAC §65.34) sets a period of validity for tags to run from the Saturday closest to September 30 until the last Sunday in January, with harvest during the first 35 days of that period being limited to lawful archery equipment. The proposed new rule would retain those provisions. The proposed new MLDP for mule deer would allow for program participation on the basis of aggregate acreage. Mule deer are dispersed across their range at very low densities compared to white-tailed deer and properties must be quite large in order to biologically justify tag issuance, unlike the case with white-tailed deer. Therefore, the department wishes to provide owners of small tracts a way to bundle aggregate acreage to maximize hunting opportunity.

Proposed new §65.29(e) would set forth the conditions under which the department would consider refusing to allow or continue enrollment in the MLDP.

Proposed new §65.29(e)(1) would establish the administrative violations that would constitute grounds for refusing to allow or continue enrollment in the MLDP. The department does not desire or intend to micromanage program participants; however, there are three areas in which the department considers compliance to be critical to the integrity of the program. Proposed new paragraph (1)(A) would allow the department to refuse to allow or continue enrollment in the MLDP for any applicant who as of a reporting deadline has failed to report to the department any information required to be reported under the provisions of the proposed new section. The integrity of the MLDP is in part a

function of receiving harvest, population, and habitat data (as applicable) from program participants with enough time for the department to make harvest recommendations that are biologically sensible and sustainable and issue MLDP tags in a timely fashion. The reporting deadlines established in the proposed new rule are therefore quite important, and the department considers it not unreasonable to expect program participants to comply with them. Similarly, the integrity of the program also rests on compliance with the harvest quotas and habitat management goals established by the department. Proposed new paragraph (1)(B) and (C) would allow the department to refuse to allow or continue enrollment in the MLDP for any applicant who has exceeded the total harvest recommendation established for an enrolled tract of land or has failed to implement the three habitat management practices specified in a department-approved WMP during each year of program participation, if the tract of land is enrolled in the CO. A program participant who exceeds the harvest quota is in effect exceeding a bag limit, which, if repeated at a large enough scale, results in negative impacts to the resource and thus would be counter to the goals of the program. A program participant who intentionally or without reason fails to perform the habitat management practices called for in the WMP under the CO is not only failing to assist the department in attaining the goal of the MLDP, which is to improve habitat on as much acreage as possible, but is also accepting the benefits of program participation without performing agreed-upon obligations. The department believes that in these types of circumstances it is justifiable to refuse to issue tags or continue program participation if necessary.

Proposed new §65.29(e)(2) would allow the department to refuse to allow or continue enrollment in the MLDP for any applicant who a final conviction or has been assessed an administrative penalty for a violation of Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1; a provision of the Parks and Wildlife Code other than Chapter 43, Subchapter C, E, L, R, or R-1 that is a Parks and Wildlife Code Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the proposed new section would allow the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from program participation under the proposed new provision.

The department has determined that the decision to allow program participation should take into account an applicant's history of violations involving the capture and possession of live animals, major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of taking or allowing the take of wildlife resources for personal benefit to persons who exhibit a demonstrable disregard for the regulations governing wildlife. Similarly, it is appropriate to deny the privilege of personally benefitting from wildlife to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal govern-

ment need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing program participation in the MLDP. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of program participation as a result of an adjudicative status listed in the proposed new rule would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse tag issuance based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations was the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigation factors.

Proposed new §65.29(f) would create several special provisions. Because the proposed new rule would be implemented as an automated, web-based application, reporting, and issuance system, it cannot take effect until the necessary software and hardware platforms have been developed, and they cannot be developed without a standing regulation that establishes the parameters of the MLDP program with certainty. For that reason, the rule would take effect on its own terms on September 1, 2017. Because current rules regarding MLDP, LAMPS, bag limits, tagging requirements and license log utilization would conflict with proposed new rule but must remain in effect until the proposed new rule takes effect, the department must create an accommodation for each potential conflict, as well as a general statement to the effect that in the event of additional conflicts, the provisions of the proposed new rule will control. The department will harmonize the various regulatory conflicts at a later date. Finally, the proposed new provision would provide for alternative program administration in the case that technical difficulties make the department's web-based application inoperable or unavailable, which is necessary to provide for program continuity.

Alan Cain, White-tailed Deer Program Leader, has determined that for each of the first five years that the rule as proposed is in effect, there will be minimal fiscal implications to state government as a result of enforcing or administering the proposed rule. The department anticipates an expense of approximately \$732,000 to develop the web-based MLDP application and integrate it with current data architecture; however, the current annual cost of administering the MLDP is approximately \$790,000, which is primarily due to intensive manpower requirements asso-

ciated with manual application processing, in-person site visits, and WMP development and evaluation. Therefore, the department estimates that the proposed rule will result in savings of approximately \$58,000 per year for each of the first five years the proposed new rule is in effect. The proposed new MLDP is expected to greatly reduce the current manpower inputs required for program administration, allowing those resources to be allocated elsewhere. Thus, the department expects the cost of developing and implementing the new MLDP to be offset by the value of staff resources invested elsewhere as the result of administrative efficiency created by the new MLDP. The cost of enforcing the proposed new MLDP is expected to remain constant.

There will be no fiscal impacts to other units of state or local governments as a result of enforcing or administering the proposed rule.

Mr. Cain also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the ability of department staff to provide additional, more nuanced, and more effective technical guidance to landowners and land managers as a result of greater program efficiency.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, commission considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses or microbusinesses because the proposed rule will not directly affect small businesses or micro-businesses. The proposed rule affects the regulation of recreational license privileges that allow individual persons to pursue and harvest white-tailed deer and mule deer. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

Participation in the MLDP is not mandatory. As noted above, the proposed rule would regulate recreational license privileges that allow individual persons to pursue and harvest white-tailed deer and mule deer. However, landowners who elect to participate in the program would be required to comply with the provisions of the proposed rule. As a result, there could be adverse economic effects on persons required to comply with the rule as proposed. The proposed rule would require all MLDP program participants to submit required information (applications and reports) to the department via the Internet. For persons who already own or have access to a computer or personal digital device (such as a tablet or smart phone) and have Internet access, there is no adverse economic cost to comply with the proposed rule. Prospective and active program participants who do not already own or have access to a computer or other digital device with

Internet access would have to ensure that the application and reporting requirements of the new rule are effected via the Internet. For persons who do not possess a computer or other digital device that can access the Internet, compliance with proposed rule would require either access to a public computer with Internet access, a friend or family member with access to a computer with Internet access, purchase or lease of hardware and Internet access, or the absorption of the cost of hiring someone with the equipment and expertise to perform the required actions. Department research indicates that adequate hardware is widely available and can be purchased for approximately \$200. Internet access is an additional charge that varies from approximately \$15 to \$100 per month, depending on the technology and carrier plan, resulting in an estimated additional cost of between \$380 and \$1,400 for the first year (\$200, plus the monthly Internet provide costs of \$15-\$100/month), but a cost of \$180 to \$1,200 a year for subsequent years consisting solely of the Internet provider costs. The department also notes that the tremendous growth in internet adoption by Texas households (U.S. Census Bureau data for 2011 estimated that nearly 80% of Texas households have internet access (see <http://www.ntia.doc.gov/report/2013/exploring-digital-nation-americas-emerging-online-experience>) indicates that online communication is less and less of an obstacle to Texans.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to [http://www.tpwd.state.tx.us/business/feedback/public\\_comment/](http://www.tpwd.state.tx.us/business/feedback/public_comment/) or Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4775 (e-mail: [robert.macdonald@tpwd.texas.gov](mailto:robert.macdonald@tpwd.texas.gov)).

The new rule is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; §42.0177, which authorizes the commission to modify or eliminate the tagging requirements of §§42.018, 42.0185, or 42.020, or other similar tagging requirements in Chapter 42; and, §43.201(c) which authorizes the commission to exempt a person from the archery stamp requirement.

The proposed new rule affects Parks and Wildlife Code, Chapters 42, 43, and 61.

§65.29. *Managed Lands Deer (MLD) Programs.*

(a) Definitions. The following words and terms shall have the following meanings, unless the context clearly indicates otherwise. All

other words and terms in this section shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) Landowner--Any person who has an ownership interest in a tract of land.

(2) MLDP--The Managed Lands Deer Program established by this subchapter, which consists of:

(A) the Harvest Option (HO) set forth in subsection (c)(1) of this section; and

(B) the Conservation Option (CO) set forth in subsections (c)(2) and (d) of this section.

(3) MLDP tag--A tag issued by the department to a participant in any option under this section.

(4) Program participant--A landowner or a landowner's authorized agent who is enrolled in the MLDP.

(5) Resource management unit (RMU)--An area of the state designated by the department on the basis of shared characteristics such as soil types, vegetation types, precipitation, land use practices, and deer densities.

(6) Unbranched antlered deer--A buck deer having at least one antler with no more than one antler point.

(7) Wildlife Management Plan (WMP)--A written document on a form furnished or approved by the department that addresses habitat and population and management recommendations, associated data, and data collection methodologies.

(8) Wildlife Management Associations and Cooperatives--A group of landowners who have mutually agreed in writing to act collectively to improve wildlife habitat and populations on their tracts of land.

(b) General Provisions.

(1) A landowner and the landowner's tract(s) of land are enrolled:

(A) in the Harvest Option (HO) set forth in subsection (c)(1) of this section, when an application has been approved by the department; or

(B) in the Conservation Option (CO) set forth in subsection (c)(2) or (d) of this section, when the department has approved:

(i) an application; and

(ii) the WMP required by subsection (c)(2) of this section.

(2) A landowner may appoint a person to act as the landowner's authorized agent for purposes of program participation. The authorization must be on a form approved by the department.

(3) MLDP tags are issued to a program participant.

(4) If MLDP tags are issued under the provisions of subsection (c)(1)(B) or (2)(H)(ii) of this section, the tags are valid on any tract of land within the aggregate acreage enrolled in the MLDP; otherwise, tags are valid only on the specific enrolled tract of land for which they are issued.

(5) On an enrolled tract of land there is no personal or annual bag limit for the type of deer (buck, unbranched antlered, or antlerless) for which MLDP tags have been issued and the provisions of §65.42(b)(17) of this title (relating to Muzzleloader-only Open Season), §65.42(b)(18) of this title (relating to Special Youth-Only Sea-

sons), and the stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I (relating to Archery Stamps), do not apply.

(6) A person who kills a deer on an enrolled tract of land must immediately tag the deer with a MLDP tag valid for the species (white-tailed deer or mule deer) and type of deer (buck, unbranched antlered, antlerless) harvested. A person who kills a deer and immediately takes the carcass to a location on the enrolled tract of land where a valid MLDP tag provided by the program participant is immediately attached shall be considered to have complied with the immediate tagging requirement. The MLDP tag shall remain attached to the carcass until the carcass reaches a final destination. Notwithstanding any other provision of this section, it is unlawful for any person to:

(A) attach a mule deer tag to a white-tailed deer or vice versa;

(B) attach an unbranched antlered MLDP tag or antlerless MLDP tag to a buck deer having more than one point on both antlers;

(C) tag an unbranched antlered deer with an antlerless MLDP tag;

(D) tag an antlerless deer with any tag other than an antlerless MLDP tag;

(E) use an MLDP tag or tag number more than once; or

(F) use an MLDP tag on a tract of land other than the tract for which the tag was issued.

(7) A program participant shall maintain a legible daily harvest log.

(A) For tracts of land enrolled under the provisions of subsection (c)(1)(B) or (2)(H)(ii) of this section, the daily log must be maintained on the aggregate acreage enrolled in the MLDP; otherwise, the daily harvest log must be maintained on the specific enrolled tract for which tags are issued.

(B) The daily harvest log shall be on a form provided or approved by the department and shall be maintained by the program participant until the last day of tag validity.

(C) A person who kills a deer that is required to be tagged under the provisions of this section must, on the same day that the deer is killed, legibly enter the required information in the daily harvest log.

(D) The daily harvest log shall contain the following information for each deer killed on the enrolled tract of land:

(i) the name and hunting license or driver's license number of the person who killed the deer;

(ii) the date the deer was killed;

(iii) the species (white-tailed or mule deer) and type of deer killed (buck, unbranched antlered, or antlerless); and

(iv) the tag number of the MLDP tag affixed to the deer.

(E) The daily harvest log shall be made available to any department employee acting in the performance of official duties upon request.

(8) By not later than April 1 in each year of participation, a program participant shall report to the department, on a form provided or prescribed by the department:

(A) the number of buck deer and/or antlerless deer harvested on each tract of land enrolled in the MLDP;

(B) the habitat management practices implemented on each tract of land enrolled in the CO; and

(C) additional information as requested by the department.

(9) If an applicant does not wish to engage in program participation, the applicant must affirmatively decline program participation by September 15 via the department's online web application. On an enrolled tract of land for which a program participant has failed to timely decline participation as provided in this paragraph, the provisions of this section continue to apply to the harvest of deer until the last day of tag validity in the year following application.

(10) On a tract of land for which an applicant has timely declined participation under the provisions of paragraph, the provisions of §65.42 of this title (relating to Deer) apply.

(11) A program participant who complies with the requirements of paragraph (7)(A) - (E) of this subsection also satisfies the requirements of Parks and Wildlife Code, §62.029, (relating to Records of Game in Cold Storage or Processing Facility), with respect to deer, provided the daily harvest log maintained on the tract of land:

(A) contains the address and hunting license number of each person who harvested a deer; and

(B) is retained at the cold storage/processing facility for a period of at least one year following the date of the last entry.

(c) MLDP--White-tailed Deer. The provisions of this subsection shall govern the authorization and conduct of MLDP participation with respect to white-tailed deer.

(1) Harvest Option (HO).

(A) Any landowner or authorized agent may apply to enroll a tract of land in the HO by submitting an application to the department by no later than September 1 of each year on a form provided by the department.

(B) Multiple landowners may combine contiguous tracts of land to create an aggregate acreage for program enrollment.

(i) A landowner or authorized agent participating in the MLDP under the provisions of this subparagraph must designate a single program participant to receive MLDP tags.

(ii) MLDP tags issued under the provisions of this paragraph may be utilized on any tract of land within the aggregate acreage enrolled in the MLDP.

(C) The department shall specify a harvest quota establishing the maximum number of buck, unbranched antlered, or antlerless deer to be harvested on each tract of land or aggregate acreage enrolled in the HO. The harvest quota shall be based on:

(i) department-derived survey data for the RMU in which the tract of land is located;

(ii) the size of the tract of land enrolled in MLDP;

(iii) the types of habitat and the amounts of each type of habitat on the tract of land enrolled in the MLDP; and

(iv) any other information deemed relevant by the department.

(D) On a tract of land enrolled under this subsection:

(i) MLDP tags for antlerless deer and unbranched antlered deer are valid from the Saturday closest to September 30 until the last day of February, during which time antlerless deer and unbranched antlered deer may be taken by any lawful means; and

(ii) MLDP tags for buck deer are valid:

(I) from the Saturday closest to September 30 for 35 consecutive days during which time buck deer may be taken only by means of lawful archery equipment; and

(II) from the first Saturday in November until the last day of February, during which time buck deer may be taken by any lawful means.

(E) If a program participant under this paragraph elects to receive a tag issuance for only one type of deer (buck or antlerless), the provisions of §65.42 of this title apply to the harvest of the other type of deer on the enrolled tract of land.

(2) Conservation Option (CO).

(A) Any landowner or authorized agent may apply to enroll a tract of land in the CO by applying for acceptance by no later than June 15 on a form provided or prescribed by the department.

(B) A department-approved WMP is required for program participation under this paragraph. The WMP must contain, at a minimum:

(i) acreage and habitat information requested by the department;

(ii) deer population and harvest data for each of the two years immediately preceding the year in which initial program participation is sought;

(iii) evidence satisfactory to the department that at least two department-approved habitat management practices have been implemented on the tract of land during each of the two years immediately preceding application; and

(iv) acknowledgement that site visits by the department to assess habitat management practices on the tract of land may be conducted at the request of any department employee.

(C) A WMP is not valid unless it has been signed by a Wildlife Division employee assigned to evaluate wildlife management plans.

(D) To be eligible for continued program participation, a program participant must implement three habitat management practices specified in a department-approved WMP during each year of program participation.

(E) On a tract of land enrolled under this subsection:

(i) the department will specify a harvest quota of buck and/or antlerless deer, based on the unique characteristics of the tract of land and the deer population; and

(ii) MLDP tags are valid from the Saturday closest to September 30 until the last day of February, during which time deer may be taken by any lawful means.

(F) The department may authorize additional harvest on any tract of land enrolled in the CO, provided the program participant furnishes survey or population data that in the opinion of the department justifies the additional harvest.

(G) In the event that unforeseeable developments such as floods, droughts, or other natural disasters make the attainment of recommended habitat management practices impractical or impossible, the department may, on a case-by-case basis, waive or defer the habitat management requirements of this section.

(H) Special Provisions.

(i) Wildlife Management Associations and Cooperatives.

(I) The department may enroll a wildlife management association or cooperative in the CO under the provisions of this subsection, provided:

(-a-) the application contains the name, address, and express consent of the landowner of each tract of land for which enrollment is sought; and

(-b-) a single WMP that addresses all tracts of land within the wildlife management association or cooperative is submitted and approved by the department.

(II) A wildlife management association or cooperative may choose to receive antlerless-only or either-sex tag issuance.

(III) The department shall issue MLDP tags to the individual landowners or landowner's authorized agent within a wildlife management association or cooperative and the tags are valid only on the tract of land for which they are issued.

(ii) Other Aggregate Acreages. Multiple landowners may combine contiguous tracts of land to create an aggregate acreage for program enrollment, provided:

(I) the application contains the name, address, and express consent of the landowner of each tract of land for which enrollment is sought; and

(II) a single WMP that addresses all tracts of land within the aggregate acreage is submitted and approved by the department.

(III) the program participants designate a single program participant to receive MLDP tags for the aggregate acreage.

(I) Program eligibility under this subsection is specifically restricted to tracts of land in counties for which an open season for white-tailed deer is provided under §65.42 of this title.

(d) MLDP--Mule Deer. The provisions of subsection (c)(2)(A) - (H) of this section also shall govern the authorization and conduct of program participation with respect to mule deer, except:

(1) the harvest of mule deer shall occur only between the Saturday closest to September 30 and the last Sunday of January, as follows:

(A) from the Saturday closest to September 30 for 35 consecutive days, the lawful means of harvest is restricted to lawful archery equipment; and

(B) from the first Saturday in November through the last Sunday in January, any lawful means may be used to harvest deer; and

(2) program eligibility is specifically restricted to tracts of land in counties for which an open season for mule deer is provided under §65.42 of this title.

(e) Refusal of Enrollment.

(1) The department may refuse to allow or continue enrollment in the MLDP for any applicant who:

(A) as of a reporting deadline has failed to report to the department any information required to be reported under the provisions of this section;

(B) has exceeded the total harvest recommendation established for an enrolled tract of land; or

(C) has failed to implement the three habitat management practices specified in a department-approved WMP during each year of program participation, if the tract of land is enrolled in the CO.

(2) The department may prohibit any person from participating in the MLDP if the person has a final conviction or has been assessed an administrative penalty for a violation of:

(A) Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1;

(B) a provision of the Parks and Wildlife Code that is not described by subparagraph (A) of this paragraph that is punishable as a Parks and Wildlife Code:

(i) Class A or B misdemeanor;

(ii) state jail felony; or

(iii) felony;

(C) Parks and Wildlife Code, §63.002; or

(D) the Lacey Act (16 U.S.C. §§3371-3378).

(3) The department may refuse to allow or continue enrollment in the MLDP to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this section from participation in the MLDP.

(f) Special Provisions.

(1) On September 1, 2017:

(A) the provisions of this section take effect;

(B) the annual bag limit established under §65.42 of this title does not apply to deer lawfully taken and tagged under the provisions of this section;

(C) the tagging requirements of Parks and Wildlife Code, §42.018, do not apply to deer lawfully taken under the provisions of this section;

(D) completion of the harvest log required under §65.7 of this title (relating to Harvest Log) is not required for deer lawfully tagged under the provisions of this section; and

(E) the provisions of §65.10 of this title (relating to Possession of Wildlife Resources) apply to deer lawfully taken under this section.

(2) To the extent that any provision of this subchapter conflicts with the provisions of this section, the provisions of this section prevail.

(3) In the event that the department's web-based application is unavailable or inoperable, the department may specify manual procedures for compliance with the requirements of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 3, 2015.

TRD-201502532

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 389-4775



# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

### CHAPTER 2. LOCAL AUTHORITY RESPONSIBILITIES

#### SUBCHAPTER G. ROLE AND RESPONSIBILITIES OF A LOCAL AUTHORITY

##### 40 TAC §§2.301 - 2.303, 2.305, 2.307, 2.309, 2.311, 2.313, 2.315

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §2.301, concerning purpose; §2.302, concerning application; §2.303, concerning definitions; §2.305, concerning MRA's role and responsibilities; §2.307, concerning access, screening, intake, service coordination, enrollment, state MR facility admission, and safety net functions; §2.309, concerning MRA responsibilities for institutional residents; §2.311, concerning provision and oversight of general revenue services; §2.313, concerning health, safety, and rights; and §2.315, concerning MRA administrative functions, in Chapter 2, Local Authority Responsibilities, Subchapter G, Role and Responsibilities of a Local Authority.

#### BACKGROUND AND PURPOSE

The proposed amendments implement House Bill (H.B.) 2276, 83rd Legislature, 2013, which added a requirement that written materials about residential options be provided to persons who inquire about residential services at a local intellectual and developmental disability authority (LIDDA). The proposed amendments also consolidate into one section the requirements for a LIDDA to provide an explanation of all intellectual and developmental disability (IDD) services and supports to persons inquiring about IDD services. The proposed amendments also eliminate use of the term "TDMHMR-certified psychologist" in response to H.B. 807, 83rd Legislature, 2013. The term has been replaced with "certified authorized provider."

The proposed amendments also make editorial changes to update terminology and for clarity and consistency.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §2.301 replaces the term "MRA" with "local intellectual and developmental disability authority (LIDDA)" to reflect current terminology.

The proposed amendment to §2.302 replaces the term "MRA" with current terminology.

The proposed amendment to §2.303 replaces the term "MRA" with current terminology. The proposed amendment also replaces "mental retardation" with "intellectual disability" and, when appropriate, "developmental disabilities" to reflect current terminology. The proposed amendment deletes the term "CARE" because it is not used in Chapter 2. The proposed amendment replaces the acronym "ICF/MR" with "ICF/IID," which stands for the Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions Program, to reflect current terminology. The proposed amendment replaces the term "mental retardation priority population" with "LIDDA

priority population," referencing the definition in Texas Administrative Code, Title 40 (40 TAC) §5.153, a proposed new section published elsewhere in this issue of the *Texas Register*, to reflect current terminology. The amendment replaces the term "subaverage general intellectual functioning" with "significantly subaverage general intellectual functioning," referencing the definition in 40 TAC §5.153. This change is consistent with the term used in the definition of "intellectual disability" in Texas Health and Safety Code §591.003(7-a). The amendment adds the term "CFC--Community First Choice" and references 1 TAC Chapter 354, Subchapter A, Division 27 (relating to Community First Choice). The amendment adds the term "specialized services" and references the definition in 40 TAC §17.102. The proposed amendment replaces the term "state MR facility" and its definition with "state supported living center" and a similar definition to reflect current terminology.

The proposed amendment to §2.305 clarifies that a LIDDA's role is to serve as the single point of access to certain services and supports that are publicly funded. The proposed amendment also replaces "MRA" with current terminology.

The proposed amendment to §2.307 replaces "MRA," "mental retardation," and "mental retardation priority population" with current terminology. The proposed amendment reorganizes subsection (b), regarding screening. The amendment adds a requirement to subsection (b) that a LIDDA develop and implement policies and procedures that address assisting an individual in identifying services and supports preferences, documenting the preferences, and maintaining a copy of the documentation. The amendment also adds a requirement to subsection (b) for a LIDDA to develop and implement policies and procedures that address providing a DADS-developed pamphlet about residential options for people who inquire about residential services at the LIDDA. This change is in response to H.B. 2276. The proposed amendment also adds to subsection (b) the requirement to develop and implement policies and procedures that address providing the information a LIDDA is currently required to provide by 40 TAC §5.159. Section 5.159 is proposed for repeal elsewhere in this issue of the *Texas Register*. The proposed amendment corrects titles of rules and the DADS guidelines for person-directed planning in subsection (c). The proposed amendment adds new subsection (g), which requires a LIDDA to conduct enrollment activities for an individual who is referred to the LIDDA by a Medicaid managed care organization and who is enrolling in Community First Choice (CFC) services. The proposed amendment also adds new subsection (j), which requires a LIDDA to conduct preadmission screening and resident review (PASRR) evaluations.

The proposed amendment to §2.309 replaces "MRA," "state MR facility," "ICF/MR," and "mental retardation" with current terminology. The proposed amendment clarifies that the requirement to conduct the community living options information process only applies to LIDDAs whose local service area includes a state supported living center. The proposed amendment deletes the statement that a LIDDA must conduct permanency planning for an individual under 22 years of age who is residing in a nursing facility because the Health and Human Services Commission contracts with an entity that is not a LIDDA to provide permanency planning in nursing facilities. The proposed amendment adds subsection (d), which requires a LIDDA to ensure the provision of specialized services to certain residents of a nursing facility in accordance with 40 TAC Chapter 17, and the performance contract.

The proposed amendment to §2.311 replaces "MRA" and "mental retardation" with current terminology.

The proposed amendment to §2.313 replaces "MRA" and "mental retardation" with current terminology. The proposed amendment reorganizes subsection (e), regarding behavioral support, and makes changes to the qualifications of a person who provides behavioral support. Specifically, the proposed amendment adds a licensed clinical social worker and a licensed professional counselor to the list of persons who may be a provider of behavioral support to increase the availability of qualified providers of this service and for consistency with other DADS programs that provide behavioral support. The proposed amendment replaces the term "DADS-certified psychologist" with "certified authorized provider" to reflect a proposed new term in 40 TAC Chapter 5, Subchapter D, governing diagnostic assessment, which is published elsewhere in this issue of the *Texas Register*.

The proposed amendment to §2.315 replaces "MRA" and "mental retardation" with current terminology. The proposed amendment adds a reference in subsection (g)(1) to the Texas Home Living Program to reflect that a LIDDA manages the interest list for that program. In addition, the proposed amendment changes the requirement in subsection (g)(2) that a LIDDA have policies and procedures for contacting individuals on the LIDDA's interest list for services funded with general revenue "annually" to a requirement that contact be made "periodically" because the agency does not need to dictate the frequency of the contact.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses.

#### PUBLIC BENEFIT AND COSTS

Elisa J. Garza, Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is the availability of written materials about residential options for persons who inquire about residential services at LIDDAs and the identification of the LIDDA as the entity responsible for conducting enrollment activities for individuals enrolling in CFC services through managed care.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Marcia Shultz at (512) 438-3532 in DADS Access and Intake. Written comments on the proposal may be submitted to

Texas Register Liaison, Legal Services-13R20, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R20" in the subject line.

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §534.052, which provides that the HHSC executive commissioner shall adopt rules necessary and appropriate to ensure the adequate provision of community-based services through a local intellectual and developmental disability authority, and §533.0355, which provides that the HHSC executive commissioner shall adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities.

The amendments affect Texas Government Code, §531.0055; Texas Human Resources Code §161.021; and Texas Health and Safety Code §534.052 and §533.0355.

#### §2.301. Purpose.

The purpose of this subchapter is to describe the role and responsibilities of a local intellectual and developmental disability authority (LIDDA) [an MRA], including those responsibilities described in THSC, §533.0355(b).

#### §2.302. Application.

This subchapter applies to a LIDDA [an MRA].

#### §2.303. Definitions.

The following terms and phrases, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the LIDDA [MRA], based on the person's:

- (A) interactions with the individual;
- (B) availability to the individual for assistance or support when needed; and
- (C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(2) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.



(3) Behavioral emergency--A situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by an individual:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the individual or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) is not addressed in a written behavioral support plan; and

(D) does not occur during a medical or dental procedure.

(4) Behavioral support--Specialized interventions that assist an individual with increasing adaptive behaviors to replace or modify maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life.

(5) Capacity--A person's ability to:

(A) understand the information provided to the person regarding a proposed psychoactive medication or behavioral support plan as described in §2.313(d)(1) or (e)(3) of this subchapter (relating to Health, Safety, and Rights); and

(B) make a decision whether to take the proposed medication or accept the behavioral support plan.

(6) CFC--Community First Choice. A Medicaid state plan benefit described in 1 TAC Chapter 354, Subchapter A, Division 27 (relating to Community First Choice).

~~[(6) CARE--The Client Assignment and Registration System database.]~~

(7) CRCG--Community resource coordination group. A local interagency group composed of public and private agencies, organizations, and families that develops a coordinated plan of services and supports for an individual with complex needs. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More than One Agency, available at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(8) DADS--The Department of Aging and Disability Services.

(9) Designated LIDDA [MRA]--The LIDDA [MRA] assigned to an individual in DADS data system [CARE].

(10) Developmental period--Birth through 17 years of age.

(11) General revenue services--Non-residential intellectual and developmental disability [mental retardation] services funded by general revenue through the performance contract, including:

(A) eligibility determinations;

(B) service coordination not funded by Medicaid Targeted Case Management; and

(C) respite.

(12) HCS Program--The Home and Community-based Services Program. A program operated by DADS and approved by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act that provides community-based services and supports to eligible individuals who live in their own homes or family homes or other residences permitted under DADS rules related to the HCS Program.

(13) ICF/IID [ICF/MR] Program--The Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions [Persons with Mental Retardation] Program. A program operated by DADS in accordance with the Social Security Act that provides Medicaid-funded residential services to individuals with an intellectual disability [mental retardation] or a related condition.

(14) Individual--A person seeking or receiving services and supports from a LIDDA [an MRA].

(15) Informed consent--Consent given by an individual or the individual's LAR if the person giving the consent:

(A) is:

(i) 18 years of age or older; or

(ii) younger than 18 years of age and is or has been married or had the disabilities of minority removed for general purposes by court order as described in the Texas Family Code, Chapter 31;

(B) has not been determined by a court to lack capacity to make decisions with regard to the matter for which consent is being sought;

(C) has been provided the information described in §2.313(d)(1) or (e)(3) of this subchapter;

(D) has the capacity to give consent, as determined by the prescribing physician or the professional who develops the behavioral support plan, as applicable; and

(E) gives the consent voluntarily, free from coercion or undue influence.

(16) Intellectual disability--Consistent with THSC, §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(17) [(+6)] LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may be a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(18) LIDDA--Local intellectual and developmental disability authority. An entity designated in accordance with THSC, §533.035(a).

(19) LIDDA priority population--As defined in §5.153 of this title (relating to Definitions).

(20) [(+7)] Local planning--A broad-based community participatory process that identifies community values, service needs, and service priorities for individuals in the LIDDA [mental retardation] priority population within a local service area and which guides resource development and allocation and results in a local plan that identifies goals and establishes strategies for accomplishment.

(21) [(+8)] Local service area--A geographic area composed of one or more Texas counties as identified in the performance contract to be served by a LIDDA [an MRA].

(22) [(+9)] Medication class--A group of medications with similar actions and indications for use.

~~[(20) Mental retardation--Consistent with THSC, §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.]~~

[(21) MRA—mental retardation authority. As defined in THSC, §531.002, an entity designated in accordance with the THSC, §533.035(a), to which the Health and Human Services Commission executive commissioner delegates the state's authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental retardation services to persons with mental retardation in the most appropriate and available setting to meet individual needs in one or more local service areas.]

[(22) Mental retardation priority population--Those persons who meet one or more of the following descriptions:]

[(A) have mental retardation;]

[(B) have a pervasive developmental disorder;]

[(C) have a related condition, are eligible for, and are enrolling in the ICF/MR Program, the HCS Program, or the TxHml Program;]

[(D) are nursing facility residents who are eligible for specialized services for mental retardation or a related condition pursuant to §1919(e)(7) of the Social Security Act; or]

[(E) are children eligible for early childhood intervention services provided in accordance with Chapter 108 of this title (relating to Division for Early Childhood Intervention Services).]

(23) Performance contract--A written agreement between DADS and a LIDDA [an MRA] as required by THSC, §534.054, for the provision of one or more functions as described in THSC, §533.035(a), and for the provision of general revenue services. The performance contract allocates general revenue funds for the LIDDA [MRA] to fulfill its role and responsibilities as a LIDDA [an MRA].

(24) Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(25) Person-directed planning--A process that empowers the individual (and the LAR on the individual's behalf) to direct the development of a plan for services and supports that meet the individual's outcomes. The process:

(A) identifies existing services and supports necessary to achieve the individual's outcomes;

(B) identifies natural supports available to the individual and negotiates needed service system supports;

(C) occurs with the support of a group of people chosen by the individual (and the LAR on the individual's behalf); and

(D) accommodates the individual's style of interaction and preferences regarding time and setting.

(26) Planning team--Persons convened by an individual's LIDDA [MRA] to develop a plan of services and supports for an individual. The team includes:

(A) the individual;

(B) if applicable, the LAR or actively involved person;

(C) the staff member assigned to the individual by the LIDDA [MRA]; and

(D) other persons chosen by the individual, LAR, or actively involved person.

(27) Psychoactive medication--A medication for which the primary intended therapeutic effect is to treat or ameliorate the signs or symptoms of mental disorder, or to modify mood, affect, perception, or behavior.

(28) Restraint--A manual method, except for physical guidance or prompting of brief duration, or a mechanical device to restrict:

(A) the free movement or normal functioning of all or a portion of an individual's body; or

(B) normal access by an individual to a portion of the individual's body.

(29) Rights protection officer--As referenced in §4.113 of this title (relating to Rights Protection Officer at a State MR Facility or MRA), the staff member of a LIDDA [an MRA] whose primary duty is to advocate for the rights of individuals served by that LIDDA [MRA] and to assist LARs in advocating for the rights of individuals.

(30) Safety net functions--As referenced in THSC, §533.0355(a)(6), functions performed by a LIDDA [an MRA] with available resources to respond to an individual in the LIDDA [mental retardation] priority population who has an intensive need or who is in crisis to protect the individual's health and safety.

(31) Service coordination--A service provided by a LIDDA [an MRA] as defined in §2.553 of this chapter (relating to Definitions) contained in Subchapter L (relating to Service Coordination for Individuals with Mental Retardation).

(32) Service coordinator--A LIDDA [An MRA] employee who:

(A) meets the qualifications and has received training set forth in §2.559 of this chapter (relating to Minimum Qualifications) and §2.560 of this chapter (relating to Staff Training) contained in Subchapter L (relating to Service Coordination for Individuals with Mental Retardation); and

(B) performs service coordination activities.

(33) Services and supports--General revenue services and other publicly funded intellectual and developmental disability [mental retardation] services.

(34) Significantly subaverage general intellectual functioning--As defined in §5.153 of this title (relating to Definitions).

(35) Specialized services--As defined in §17.102 of this title (relating to Definitions).

(36) SSLC--State supported living center. A facility operated by DADS, including the ICF/IID component of the Rio Grande State Center, that provides services, including residential services, to individuals with a profound or severe intellectual disability or an intellectual disability with intensive medical or behavioral needs.

(37) [(34)] Staff member--Personnel of a LIDDA [an MRA] including a full-time and part-time employee and a contractor.

[(35) State MR facility--A state school or a state center with a mental retardation residential component that is operated by DADS.]

[(36) Subaverage general intellectual functioning--Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.]

(38) [(37)] THSC--The Texas Health and Safety Code.

(39) [(38)] TxHmL Program--The Texas Home Living Program. A program operated by DADS and approved by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

§2.305. LIDDA's [MRA's] Role and Responsibilities.

(a) A LIDDA's [An MRA's] role is to serve as the single point of access to certain publicly funded services and supports for the residents within the LIDDA's [MRA's] local service area.

(b) As the single point of access, a LIDDA's [an MRA's] responsibilities include:

(1) providing information about services and supports to an individual and LAR or actively involved person;

(2) ensuring an individual's access into services and supports by:

(A) conducting intake and eligibility activities for an individual seeking services and supports; and

(B) enrolling or admitting an eligible individual into services and supports;

(3) performing safety net functions;

(4) ensuring the provision and oversight of general revenue services by:

(A) developing and managing a network of general revenue services providers; and

(B) establishing processes to monitor the performance of general revenue services providers;

(5) conducting service coordination;

(6) conducting utilization management;

(7) conducting planning for the local service area, including ensuring involvement by a local advisory committee and other stakeholders;

(8) conducting permanency planning for certain individuals under 22 years of age; and

(9) protecting the rights of an individual.

(c) This subchapter elaborates on the responsibilities listed in subsection (b) of this section and describes other responsibilities of a LIDDA [an MRA].

§2.307. Access, Intake, and Enrollment Related Responsibilities. [Access, Screening, Intake, Service Coordination, Enrollment, State MR Facility Admission, and Safety Net Functions:]

(a) Access. A LIDDA [An MRA] must have a place of business reasonably accessible to the residents of the local service area where an individual can request [learn about all] services and supports [for which the individual may be eligible]. The LIDDA [MRA] must assist an individual for whom it is the designated LIDDA [MRA] with accessing such services and supports.

(b) Screening.

(1) A LIDDA must develop and implement policies and procedures related to screening an individual seeking services and supports that address:

(A) providing an oral and written explanation of services and supports to the individual and LAR or actively involved person and family member using DADS-approved documents;

(B) gathering and documenting information to determine a need for services and supports;

(C) triaging immediate needs to be responsive to a crisis situation;

(D) determining whether a request can be met with resources at the LIDDA or whether the individual will be directed to alternate resources in the community;

(E) assisting the individual or LAR in identifying services and supports preferences, documenting those preferences on the DADS-approved form, and maintaining a copy of the documentation; and

(F) if the services and supports preferred by the individual or LAR are not available:

(i) assisting the individual or LAR in gaining access to alternative services and supports and registering the individual's name on the appropriate interest lists;

(ii) documenting efforts undertaken by the LIDDA to obtain the requested services and supports, including the names and addresses of programs and facilities to which the individual or LAR was referred; and

(iii) documenting the services and supports for which the individual is waiting.

(2) If the individual or LAR is seeking residential services, the LIDDA must develop and implement policies and procedures that address:

(A) providing to the individual, LAR, and, unless the LAR is a family member, at least one family member (if possible) both an oral and written explanation of the residential services and supports for which the individual may be eligible, including:

(i) as required by THSC, §533.038(d):

(I) state supported living centers;

(II) community ICFs/IID;

(III) waiver services under §1915(c) of the Social Security Act; and

(IV) other community-based services and supports;

(ii) as required by THSC, §533.038(g)(1), a copy of the DADS-approved publication relating to residential options for individuals with an intellectual disability or related condition; and

(iii) as required by THSC, §533.038(g)(2), information relating to whether appropriate residential services are available in each program for which the individual may be eligible, including state supported living centers, community ICFs/IID, waiver services, or other services located nearest to the residence of the individual; and

(B) if an individual is under 22 years of age, providing to the LAR an explanation of permanency planning.

[(b) Screening. An MRA must develop policies and procedures related to screening an individual seeking services and supports that address:

[(1) providing an explanation of services and supports to the individual and LAR or actively involved person and family member using DADS-approved documents;

[(2) gathering and documenting information to determine a need for services and supports;

~~[(3) triaging immediate needs to be responsive to a crisis situation;]~~

~~[(4) determining whether a request can be met with resources at the MRA or whether the individual will be directed to alternate resources in the community;]~~

~~[(5) if the individual is under 22 years of age and the LAR is requesting residential services, providing to the LAR an explanation of permanency planning;]~~

~~[(6) assisting the individual or LAR in identifying services and supports preferences and documenting those preferences; and]~~

~~[(7) registering the individual's name on the appropriate interest lists.]~~

(c) Intake. A LIDDA [An MRA] must develop and implement policies and procedures related to intake that address:

(1) determining if an individual seeking services and supports is a member of the LIDDA [mental retardation] priority population in accordance with Chapter 5, Subchapter D, of this title (relating to Diagnostic Assessment [Eligibility for Services and Supports—Mental Retardation Priority Population and Related Conditions]), and eligible for general revenue services;

(2) determining an individual's eligibility for service coordination in accordance with §2.554 of this chapter (relating to Eligibility) [and §2.555 of this chapter (relating to Assessing an Individual's Need for Service Coordination)] contained in Subchapter L (relating to Service Coordination for Individuals with an Intellectual Disability [Mental Retardation]), and documenting a description of the individual's preferences and needs using a person-directed planning process that is consistent with DADS [DADS'] *Person Directed Planning [and Family Directed Planning] Guidelines [for Individuals with Mental Retardation];*

(3) conducting a [the] financial assessment as required by Subchapter C of this chapter (relating to Charges for Community Services) and assisting an individual with applying for Medicaid benefits, Supplemental Security Income, or Social Security Disability Income, if appropriate;

(4) providing an explanation of rights of individuals with an intellectual disability [mental retardation] in accordance with Chapter 4, Subchapter C of this title (relating to Rights [and Protection] of Individuals with an Intellectual Disability [Receiving Mental Retardation Services]); and

(5) providing information to the individual and LAR about the LIDDA [MRA's] complaint, notification, and appeal processes in accordance with Subchapter A of this chapter (relating to Local [Mental Retardation] Authority Notification and Appeal).

(d) Service coordination.

(1) A LIDDA [An MRA] must offer an individual service coordination if the individual:

(A) is eligible for Medicaid and service coordination;

or

(B) is not eligible for Medicaid, but is eligible for service coordination and will be enrolled in general revenue services other than service coordination.

(2) A LIDDA [An MRA] must designate a staff member to authorize and monitor an individual's service need in accordance with the performance contract if the individual:

(A) is not eligible for service coordination; and

(B) will be enrolled in a general revenue service other than service coordination.

(e) Enrollment into general revenue services.

(1) A LIDDA [An MRA] must develop and implement policies and procedures related to enrollment into general revenue services that address:

(A) developing [the development of] a written plan of services and supports that uses a person-directed planning process and [based on the individual's preferences and needs that] includes:

(i) current services and supports, including existing natural supports;

(ii) outcomes to be achieved by the individual and the general revenue services to be provided to the individual;

(iii) any assessment to be conducted after enrollment;

(iv) the reason for each general revenue service to be provided; and

(v) the amount and duration of each general revenue service to be provided; and

(B) authorizing [the authorization for] the provision of the general revenue services identified in the plan.

(2) Except for the provision of respite in an emergency, the LIDDA [MRA] may not provide general revenue services unless authorized in accordance with the policies and procedures required by paragraph (1) of this subsection.

(f) Enrollment activities for [in] the ICF/IID [ICF/MR], HCS, and TxHmL programs.

(1) A LIDDA [An MRA] must enroll an individual in the ICF/IID [ICF/MR], HCS, or TxHmL program, [programs,] in accordance with the performance contract and DADS rules relating to those programs.

(2) A LIDDA [An MRA] must conduct permanency planning for an individual under 22 years of age who is enrolling in an HCS Program residential setting or an ICF/IID [ICF/MR] in accordance with the performance contract and DADS rules relating to those programs.

(g) Enrollment activities for Community First Choice (CFC). A LIDDA must conduct enrollment activities for an individual who is referred to the LIDDA by a Medicaid managed care organization and who is enrolling in CFC in accordance with the performance contract and the LIDDA contract with the Medicaid managed care organization.

(h) ~~[(g)]~~ Commitment or admission to a state supported living center (SSLC) [MR facility].

(1) A LIDDA [An MRA] must perform its responsibilities related to an individual's commitment or admission to an SSLC [a state MR facility] in accordance with Subchapter F of this chapter (relating to Continuity of Services--State [Mental Retardation] Facilities).

(2) A LIDDA [An MRA] must conduct permanency planning for an individual under 22 years of age who resides in an SSLC [is committed to a state MR facility] in accordance with §2.283 of this chapter (relating to MRA and State MR Facility Responsibilities) contained in Subchapter F (relating to Continuity of Services--State [Mental Retardation] Facilities), and the performance contract.

(i) ~~[(h)]~~ Safety net functions. A LIDDA [An MRA] must develop policies and procedures related to safety net functions that reflect

the priorities of its local planning efforts and are responsive to the needs of its local service area.

(j) PASRR Evaluations. A LIDDA must conduct Pre-admission Screening and Resident Review (PASRR) Evaluations as required by Chapter 17 of this title (relating to Pre-admission Screening and Resident Review (PASRR)) and the performance contract.

§2.309. LIDDA [MRA] Responsibilities for Institutional Residents.

(a) Community living options information process at SSLCS [state MR facilities]. A LIDDA whose local service area includes an SSLC [An MRA] must implement the community living options information process for residents 22 years of age and older at the SSLC [state MR facilities] as required by the performance contract and DADS rules.

(b) Continuity of services. A LIDDA [An MRA] must comply with Subchapter F (relating to Continuity of Services--State [Mental Retardation] Services), Division 4 of this chapter (relating to Moving From a State [MR] Facility to an Alternative Living Arrangement), when an SSLC [a state MR facility] interdisciplinary team recommends an alternative living arrangement for an individual residing in the SSLC [facility].

(c) Permanency planning.

(1) A LIDDA [An MRA] must conduct permanency planning for an individual under 22 years of age who is:

(A) [residing in a nursing facility;]

[(B) ] enrolled in the ICF/IID [ICF/MR] Program, including an SSLC [a state MR facility]; or

[(B) [(C)] receiving residential support or supervised living from an [the] HCS Program provider in the LIDDA local service area.

(2) A LIDDA [An MRA] must conduct permanency planning in accordance with the performance contract and the following rules:

(A) Section 2.283 of this chapter (relating to MRA and State MR Facility Responsibilities) contained in Subchapter F (relating to Continuity of Services--State [Mental Retardation] Facilities);

(B) Section 9.167 of this title (relating to Permanency Planning Reviews) contained in Chapter 9, Subchapter D (relating to Home and Community-based Services (HCS) Program); and

(C) Section 9.250 of this title (relating to Permanency Planning Reviews) contained in Chapter 9, Subchapter E (relating to ICF/IID Program [ICF/MR Programs]--Contracting).

(d) Residents of nursing facilities who are eligible for specialized services. A LIDDA must ensure the provision of specialized services to a resident of a nursing facility in accordance with Chapter 17 of this title (relating to Pre-admission Screening and Resident Review (PASRR)) and the performance contract.

§2.311. Provision and Oversight of General Revenue Services.

(a) A LIDDA [An MRA] is responsible for ensuring the provision of and overseeing an array of general revenue services described in the performance contract that is responsive to the needs of its local service area.

(b) A LIDDA [An MRA] must have policies and procedures that ensure on-going assessments are conducted for an individual, and the general revenue services in the individual's plan of services and supports are coordinated and monitored in accordance with §2.556 of

this chapter (relating to MRA's Responsibilities) and §2.561 of this chapter (relating to Documentation of Service Coordination) contained in Subchapter L (relating to Service Coordination for Individuals with an Intellectual Disability [Mental Retardation]).

(c) A LIDDA [An MRA] must have policies and procedures related to respite (in-home, facility-based, or both) funded by general revenue that:

(1) encourage the use of existing local providers of respite;

(2) encourage participation by the individual and LAR or actively involved person in the choice of a qualified provider of in-home respite;

(3) describe how in-home respite providers are selected and trained;

(4) describe how emergency backup for in-home respite providers is provided;

(5) address admission procedures; and

(6) require development of a respite plan prior to the delivery of respite except in an emergency.

§2.313. Health, Safety, and Rights.

(a) Protection of rights. A LIDDA [An MRA] must develop and implement policies and procedures that protect the rights of individuals and are consistent with Chapter 4, Subchapter C of this title (relating to Rights of Individuals with an Intellectual Disability [Mental Retardation]).

(b) Restrictions and limitations placed on an individual.

(1) A LIDDA [An MRA]:

(A) may implement behavioral support that involves restrictions or limitations placed on an individual only in accordance with paragraph (2) of this subsection and subsection (e) of this section;

(B) must comply with subsection (f) of this section when using restraint, and for restraint used under subsection (f)(2)(A) or (B) of this section, also comply with paragraph (2) of this subsection; and

(C) may place another type of restriction or limitation on an individual only if:

(i) the restriction or limitation protects the individual's health or safety that is jeopardized by an identified behavior; and

(ii) the LIDDA [MRA] complies with paragraphs (2) and (3) of this subsection.

(2) A LIDDA [An MRA] must ensure that any restriction or limitation placed on an individual, except for a restraint used under subsection (f)(2)(C) of this section, is reviewed and approved by the rights protection officer and, at the discretion of the LIDDA [MRA], other appropriate staff members who are not on the individual's planning team, before the restriction or limitation is implemented. If a restriction or limitation is implemented in an emergency, including a behavioral emergency, the LIDDA [MRA] must notify the rights protection officer as soon as possible after implementation.

(3) If a restriction or limitation not required to be in a behavioral support plan is approved in accordance with paragraph (2) of this subsection, the individual's plan of services and supports must:

(A) include the restriction or limitation;

(B) identify the circumstances or criteria to be met that will result in the removal of the restriction or limitation; and

(C) require the planning team to review the restriction or limitation, as necessary but at least annually, to determine appropriateness.

(c) Medication practices. A LIDDA's [An MRA's] policies and procedures relating to medication practices must:

(1) be consistent with accepted principles of practice and applicable state laws and regulations to ensure medication is administered safely and appropriately;

(2) be approved in writing by a physician or registered nurse; and

(3) address:

(A) proper handling, storage, and disposal of medications;

(B) proper use of telephone orders if the LIDDA [MRA] allows for telephone orders;

(C) administration of medications by staff members licensed or authorized to administer medications if the LIDDA [MRA] allows for administration of medications;

(D) supervision of self-administration of medication by an individual; and

(E) documentation of follow-up and corrective action when medication errors occur.

(d) Informed consent for psychoactive medication. Except as provided by paragraph (2) of this subsection, a physician employed or contracted by a LIDDA [an MRA] may prescribe psychoactive medication for an individual only if the individual or LAR has given written informed consent for the medication.

(1) In seeking informed consent for a psychoactive medication, the prescribing physician must provide the individual and LAR:

(A) an explanation of the medication and its purposes;

(B) the expected beneficial effects, side effects, and risks of the medication;

(C) the probable consequences of not taking the medication;

(D) the existence and value of alternative forms of treatment, if any, and why the physician does not recommend the alternative treatment;

(E) instruction that the individual or LAR may withdraw consent at any time without negative repercussions by a staff member or prejudicing the future provision of services;

(F) an opportunity to ask questions concerning the medication and its use; and

(G) the time period, not to exceed one year, for which the individual's or LAR's consent will be effective.

(2) If an individual or LAR gives informed consent for a psychoactive medication but is physically unable to document the consent in writing, the prescribing physician must document in the individual's record that informed consent was given and the reason such consent was not documented by the individual or LAR.

(3) Prior to changing an individual's medication regimen that would result in a change of medication class or in a significant change in the benefits, side effects, or risks to the individual, the physician must obtain written informed consent from the individual or LAR in accordance with this subsection.

(e) Behavioral support.

(1) A LIDDA's [An MRA's] policies and procedures related to behavioral support must include:

(A) the accepted standards of professional practice for the use of behavioral support, including the use of interventions during a behavioral emergency; and

(B) a requirement that a provider of behavioral support [only the following professionals may develop a behavioral support plan]:

(i) is [a] licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501 [licensed by the Texas State Board of Examiners of Psychologists or a qualified person under the supervision of a licensed psychologist];

(ii) is licensed as a [a] psychological associate in accordance with Texas Occupations Code, Chapter 501 [licensed by the Texas State Board of Examiners of Psychologists or a qualified person under the supervision of a licensed psychological associate];

(iii) has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501; [a behavior analyst certified by the Behavior Analyst Certification Board, Inc., or a qualified person under the supervision of a certified behavior analyst; or]

(iv) is a [DADS-certified psychologist] certified authorized provider as described in [in accordance with] §5.161 of this title (relating to Certified Authorized Provider); [TDMHMR-Certified Psychologist];

(v) is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505;

(vi) is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; or

(vii) is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.

(2) Except as provided by paragraph (4) of this subsection, behavioral support interventions that involve restrictions or limitations placed on an individual or the use of intrusive techniques may only be provided in accordance with an approved written behavioral support plan. The behavioral support plan must:

(A) be based on:

(i) a functional assessment of the individual's behavior targeted by the plan; and

(ii) input from the individual's planning team and other professionals, as appropriate;

(B) describe the interventions to be used that are appropriate to the severity of the behavior targeted by the plan;

(C) be consistent with the outcomes identified in the individual's plan of services and supports;

(D) be approved by the individual's planning team prior to implementation;

(E) be accepted by the individual or LAR as evidenced by the individual's or LAR's written informed consent;

(F) provide for the collection of behavioral data concerning the targeted behavior; and

(G) require the professional who developed the plan to:

(i) educate the individual and LAR and other persons identified by the planning team (for example, family members and providers) regarding the purpose, objectives, methods and documentation of the behavioral support plan and subsequent revisions of the plan;

(ii) monitor and evaluate the success of the behavioral support plan implementation as required by the plan;

(iii) review, with other members of the individual's planning team, the behavioral support plan at least annually, or more often as indicated, to determine the effectiveness of the plan; and

(iv) revise the plan as necessary, based on documented outcomes of the plan's implementation.

(3) In obtaining informed consent as required by paragraph (2)(E) of this subsection, the professional who developed that plan must provide the individual or LAR:

(A) a description of the interventions to be used in the behavioral support plan;

(B) the expected beneficial effects and risks of the interventions;

(C) the probable consequences of not using the interventions;

(D) the existence and value of alternative interventions, if any, and why the professional does not recommend the alternative interventions;

(E) oral and written notification that the individual or LAR may withdraw consent for the behavioral support plan at any time without negative repercussions by a staff member or prejudicing the future provision of services;

(F) an opportunity to ask questions concerning the behavioral support plan; and

(G) the time period, not to exceed one year, for which the individual's or LAR's consent will be effective.

(4) A LIDDA [~~An MRA~~] may implement behavioral support that involves restrictions or limitations placed on an individual or the use of intrusive techniques without a behavioral support plan if the support is in response to a behavioral emergency. If such behavioral support is implemented more than twice during two consecutive months, the LIDDA [~~MRA~~] must conduct a functional assessment to determine if a behavioral support plan is needed to reduce the frequency and severity of the behaviors exhibited during the behavioral emergency.

(f) Restraint.

(1) A LIDDA [~~An MRA~~] must have and implement a curriculum that ensures staff members are trained in the prevention and management of aggressive behavior. The curriculum must be consistent with the requirements of this subsection.

(2) A staff member may use restraint only under the following circumstances:

(A) in a behavioral emergency;

(B) as part of a behavioral support plan that addresses inappropriate behavior exhibited voluntarily by an individual; or

(C) in accordance with an order for the restraint from a physician, dentist, occupational therapist, or physical therapist.

(3) A staff member is prohibited from using restraint:

(A) in a manner that:

(i) obstructs the individual's airway, including the placement of anything in, on, or over the individual's mouth or nose;

(ii) impairs the individual's breathing by putting pressure on the individual's torso; or

(iii) places the individual in a prone or supine position;

(B) for disciplinary purposes (that is, for retaliation or retribution);

(C) for the convenience of a staff member or other individuals; or

(D) as a substitute for effective treatment or habilitation.

(4) If restraint will be used as part of a behavioral support plan, the planning team must:

(A) with the involvement of a physician or registered nurse, identify and document:

(i) the individual's known physical or medical conditions that might constitute a risk to the individual during the use of restraint;

(ii) the individual's ability to communicate; and

(iii) other factors, such as the individual's:

(I) cognitive functioning level;

(II) height;

(III) weight;

(IV) emotional condition, including whether the individual has a history of having been physically or sexually abused; and

(V) age; and

(B) review and update with a physician or registered nurse, at least annually or when a condition or factor documented in accordance with paragraph (4)(A) of this subsection changes significantly.

(5) If restraint is used in a behavioral emergency more than twice during two consecutive months, the planning team must ensure a functional assessment of the individual is conducted to determine if a behavioral support plan is needed to reduce the frequency and severity of the behaviors exhibited during the behavioral emergency.

(6) If a staff member restrains an individual in accordance with paragraph (2) of this subsection, the staff member must:

(A) use the minimal amount of force or pressure that is reasonable and necessary to ensure the safety of the individual and others;

(B) safeguard the individual's dignity, privacy, and well-being; and

(C) not secure the individual to a stationary object while the individual is in a standing position.

(7) If a staff member restrains an individual in accordance with paragraph (2)(A) or (B) of this subsection, the staff member may only use a restraint hold in which the individual's limbs are held close to the body to limit or prevent movement and that is in compliance with paragraph (3)(A) of this subsection.

(8) A staff member must release an individual from restraint:

(A) as soon as the individual no longer poses a risk of imminent physical harm to the individual or others; or

(B) as soon as possible if the individual in restraint experiences a medical emergency, as indicated by the medical emergency.

(9) After restraining an individual in a behavioral emergency, a staff member must:

(A) as soon as possible but no later than one hour after the use of restraint, notify a registered nurse, licensed vocational nurse, or a professional identified in subsection (e)(1)(B) of this section of the restraint;

(B) ensure that medical services are obtained for the individual as necessary; and

(C) discuss the circumstances of the restraint with a professional identified in subsection (e)(1)(B) of this section.

§2.315. LIDDA [~~MRA~~] *Administrative Functions.*

(a) Local planning.

(1) A LIDDA [~~An MRA~~] must conduct local planning in accordance with THSC, §533.0352, and ensure involvement of the local advisory committee and other stakeholders.

(2) A LIDDA [~~An MRA~~] must participate in the local CRCG when an individual has complex needs and requires multi-agency services.

(3) A LIDDA [~~An MRA~~] must coordinate with local agencies to build an integrated service delivery system that ensures broad access to and information about community services, identifies the LIDDA's [~~MRA's~~] safety net functions, and maximizes the utilization of existing resources while avoiding duplication of effort and gaps in services.

(b) Quality management. A LIDDA [~~An MRA~~] must develop a quality management program to monitor the performance of general revenue services providers and the LIDDA's [~~MRA's~~] compliance with the performance contract.

(c) Utilization management. A LIDDA [~~An MRA~~] must have:

(1) procedures describing how it authorizes general revenue services; and

(2) methods for evaluating the effectiveness of the authorization procedures.

(d) Information systems. A LIDDA [~~An MRA~~] must have information systems that:

(1) capture valid and reliable data; and

(2) accurately report required data to funding sources (for example, the Medicaid administration contractor, DADS, and other state and local agencies).

(e) Network management. A LIDDA [~~An MRA~~] must develop and manage a network of qualified providers that offer an [the] array of general revenue services described in the performance contract.

(1) If the LIDDA [~~MRA~~] is a provider of general revenue services, the LIDDA [~~MRA~~] must have written procedures describing the qualifications and expectations of staff members.

(2) If a provider of general revenue services is a contractor of the LIDDA [~~MRA~~], the LIDDA [~~MRA~~] must:

(A) ensure that the contract is procured and complies with the requirements of Subchapter B of this chapter (relating to Contracts Management for Local Authorities);

(B) have a process for resolving complaints from contract providers; and

(C) provide appropriate technical assistance and training to ensure that contract providers understand their contractual obligations (for example, documentation and billing).

(f) Consideration of public input, ultimate cost-benefit, and client care issues. In accordance with THSC §533.035(c), a LIDDA [~~An MRA~~] must consider public input, ultimate cost-benefit, and client care issues to ensure individual choice and the best use of public money in:

(1) assembling a network of general revenue services providers;

(2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in the need of services and supports; and

(3) procuring services for a local service area, including a request for [a] proposal or open-enrollment procurement method.

(g) Interest list management.

(1) A LIDDA [~~An MRA~~] must contact individuals on the HCS Program interest list and the TxHmL Program interest list [annually] as required by and in accordance with the performance contract.

(2) A LIDDA [~~An MRA~~] must have policies and procedures for registering individuals on the LIDDA's [~~MRA's~~] interest list for general revenue services and periodically [annually] contacting them [in accordance with the performance contract].

(h) Qualifications and availability of staff members.

(1) Criminal history and registry clearances. A LIDDA [~~An MRA~~] must conduct criminal history and registry clearances for job and volunteer applicants in accordance with Chapter 4, Subchapter K, of this title (relating to Criminal History and Registry Clearances).

(2) Availability of staff members. A LIDDA [~~An MRA~~] must ensure the continuous availability of trained and qualified staff members to ensure the provision of service coordination and general revenue services.

(3) Qualifications of a staff member who is a service coordinator. A LIDDA [~~An MRA~~] must ensure that a staff member who is a service coordinator meets the qualifications set forth in §2.559 of this chapter (relating to Minimum Qualifications) contained in Subchapter L (relating to Service Coordination for Individuals with an Intellectual Disability [~~Mental Retardation~~]).

(4) Qualifications of a staff member other than a service coordinator.

(A) A LIDDA [~~An MRA~~] must ensure that a staff member who is not a service coordinator and who directly provides general revenue services is at least 18 years of age and:

(i) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(ii) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:



(I) written competency-based assessment of the ability to document service delivery and observations of an individual; and

(II) at least three personal references from persons not related by blood or marriage that indicate the ability to provide a safe, healthy environment for an individual.

(B) A LIDDA [An MRA] must:

(i) document the required education and work experience for a staff member who is not a service coordinator and who directly provides general revenue services and the supervisor of such staff member by position classification, by position category, or by individual position; and

(ii) ensure that a supervisor of a staff member who is not a service coordinator and who directly provides general revenue services has a minimum of one year experience working directly with people with intellectual disability [mental retardation] or other developmental disabilities (for example, work experience, volunteer experience, or personal experience as a family member).

(C) A LIDDA [An MRA] must ensure that a staff member who is not a service coordinator and who directly provides general revenue services and the supervisor of such staff member have required state certification or licensure.

(5) Required competencies and skills relating to health, safety, and support needs of individuals.

(A) A LIDDA [An MRA] must identify in writing the required competencies and skills for a staff member by position classification, position category, or individual position that meet the health, safety, and support needs of individuals and include:

(i) time frames and frequency for the staff member to demonstrate competency; and

(ii) a method for measuring the competency and skills of the staff member.

(B) A LIDDA [An MRA] must maintain documentation that a staff member has demonstrated competencies and skills required by subparagraph (A) of this paragraph.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502563

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 438-3532



## CHAPTER 5. PROVIDER CLINICAL RESPONSIBILITIES--INTELLECTUAL DISABILITY SERVICES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Subchapter D, Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions, consisting of §§5.151 - 5.163; and new

Subchapter D, Diagnostic Assessment, consisting of §5.151, concerning purpose; §5.153, concerning definitions; §5.154, concerning use of information from a diagnostic assessment; §5.155, concerning determination of intellectual disability (DID); §5.156, concerning review and endorsement of a DID; §5.157, concerning autism spectrum disorder (ASD); §5.158, concerning related condition (RC); §5.161, concerning certified authorized provider, in Chapter 5, Provider Clinical Responsibilities--Intellectual Disability Services.

### BACKGROUND AND PURPOSE

The proposed repeal of Chapter 5, Subchapter D, removes rules related to determination of eligibility and appropriateness for services provided by a local intellectual and developmental disability authority (LIDDA) or state supported living center (SSLC), a determination of mental retardation, and TDMHMR-certified psychologists, and allows new rules to be proposed in the subchapter.

The proposed new rules in Subchapter D use terms such as "intellectual disability," "LIDDA" and "SSLC" to reflect current terminology. The proposed new rules also describe the criteria to be used and the process to be followed by a LIDDA or an SSLC to conduct a diagnostic assessment for intellectual disability, ASD, and an RC. The proposed new rules describe the process for a LIDDA or SSLC to review a DID, or a diagnosis of ASD or RC for endorsement by the LIDDA or SSLC. The proposed new rules eliminate use of the term "TDMHMR-certified psychologist" in response to H.B. 807 of the 83rd Legislature, 2013. The term has been replaced with "certified authorized provider." The proposed new rules describe the criteria to be used and the process to be followed by DADS to approve an employee of a LIDDA or SSLC as a certified authorized provider.

### SECTION-BY-SECTION SUMMARY

The proposed repeal of §5.151 removes rules regarding the purpose of Subchapter D.

The proposed repeal of §5.152 removes rules regarding the application of Subchapter D.

The proposed repeal of §5.153 removes rules regarding the definition of terms used in Subchapter D. Proposed new §5.153 contains the definitions of relevant terms in new Chapter 5, Subchapter D.

The proposed repeal of §5.154 removes rules regarding general provisions of Subchapter D.

The proposed repeal of §5.155 removes rules regarding a determination of mental retardation. Proposed new §5.155 addresses a DID.

The proposed repeal of §5.156 removes rules regarding review and endorsement of a determination of mental retardation. Proposed new §5.156 addresses the review and endorsement of a DID.

The proposed repeal of §5.157 removes rules regarding pervasive developmental disorder (PDD).

The proposed repeal of §5.158 removes rules regarding related condition (RC).

The proposed repeal of §5.159 removes rules regarding assessment of an individual's need for services and supports. The information is contained in proposed rules governing role and responsibilities of a local intellectual and developmental disability

authority in 40 TAC, Chapter 2, Subchapter G, published elsewhere in this issue of the *Texas Register*.

The proposed repeal of §5.160 removes rules regarding interdisciplinary team assessment of whether an individual can be served most appropriately in a state mental retardation facility, now referred to as an SSLC. The information is contained in rules governing continuity of services in state facilities in 40 TAC, Chapter 2, Subchapter F.

The proposed repeal of §5.161 removes rules regarding TDMHMR-certified psychologists. Proposed new §5.161 contains information related to a "certified authorized provider," which replaces the term "TDMHMR-certified psychologist."

The proposed repeal of §5.162 removes rules regarding references used in Subchapter D.

The proposed repeal of §5.163 removes rules regarding the distribution of Subchapter D.

Proposed new §5.151 describes the purpose of the subchapter. The subchapter describes the criteria to be used and the process to conduct a diagnostic assessment, to review a DID or a diagnosis of ASD or RC for endorsement, and to approve a person as a certified authorized provider.

Proposed new §5.153 defines terms used in the subchapter. Many of the terms are the ones used in current Chapter 5, Subchapter D, which is proposed for repeal. However, the proposed new rules use terms such as "intellectual disability," "LIDDA" and "SSLC" to reflect current terminology.

Proposed new §5.154 states that a LIDDA or DADS uses information from a DID or endorsement of a DID conducted in accordance with Chapter 5, Subchapter D, to determine a person's eligibility for certain services. The section also identifies services that a person may receive without an eligibility determination for the services.

Proposed new §5.155 describes the criteria and process to be followed by an authorized provider employed by or contracting with a LIDDA or SSLC to conduct a DID. The rule also describes the content of the written report of the DID and the requirements related to informing the person who requested that DID of the right to appeal the findings of the DID and to have an additional, independent DID conducted at the person's expense.

Proposed new §5.156 describes the criteria and process to be followed by an authorized provider employed by or contracting with a LIDDA or SSLC to review a DID for endorsement and to inform the individual or the individual's legally authorized representative of the outcome of the review.

Proposed new §5.157 states that an authorized provider employed by or contracting with a LIDDA or SSLC may use information from a DID to assist in establishing an individual's eligibility for LIDDA services based on the existence of ASD. The rule also describes the elements that a diagnostic assessment must include to support a diagnosis of ASD.

Proposed new §5.158 states that an authorized provider employed by or contracting with a LIDDA or SSLC may use information from a DID to assist in establishing an individual's eligibility for certain Medicaid services based on an RC, as described in the DADS-approved list of related conditions and §9.238 of this title (relating to ICF/MR Level of Care I Criteria) or §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria).

Proposed new §5.161 describes the criteria to be used and the process to be followed by a LIDDA or SSLC to request that an employee be designated as a certified authorized provider and by DADS to approve an employee of a LIDDA or an SSLC as a certified authorized provider. The rule also requires a LIDDA or SSLC to ensure the designation of a certified authorized provider remains valid.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the new sections are in effect, enforcing or administering the new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeals and new sections will not have an adverse economic effect on small businesses or micro-businesses.

#### PUBLIC BENEFIT AND COSTS

Elisa J. Garza, Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit expected as a result of enforcing the new section is the adoption of a term for professionals qualified to conduct eligibility determinations that more accurately represent that professional's qualifications, and the removal of the requirement that LIDDAs must charge a fee to determine eligibility.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the proposed repeals and new sections. The proposed repeals and new sections will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Marcia Shultz at (512) 438-3532 in DADS Access and Intake. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R20, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R20" in the subject line.

### SUBCHAPTER D. DIAGNOSTIC ELIGIBILITY FOR SERVICES AND SUPPORTS--INTELLECTUAL DISABILITY

## PRIORITY POPULATION AND RELATED CONDITIONS

### 40 TAC §§5.151 - 5.163

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §534.052, which provides that the HHSC executive commissioner shall adopt rules necessary and appropriate to ensure the adequate provision of community-based services through a local intellectual and developmental disability authority, and §533.0355, which provides that the HHSC executive commissioner shall adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities.

The repeals affect Texas Government Code, §531.0055; Texas Human Resources Code §161.021; and Texas Health and Safety Code §534.052 and §533.0355.

§5.151. *Purpose.*

§5.152. *Application.*

§5.153. *Definitions.*

§5.154. *General Provisions.*

§5.155. *Determination of Mental Retardation (DMR).*

§5.156. *Review and Endorsement of a DMR.*

§5.157. *Pervasive Developmental Disorder (PDD).*

§5.158. *Related Condition (RC).*

§5.159. *Assessment of Individual's Need for Services and Supports.*

§5.160. *IDT Assessment of Whether Individual Can Be Served Most Appropriately in a State Mental Retardation Facility.*

§5.161. *TDMHMR-Certified Psychologist.*

§5.162. *References.*

§5.163. *Distribution.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502564

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3532



## SUBCHAPTER D. DIAGNOSTIC ASSESSMENT

### 40 TAC §§5.151, 5.153 - 5.158, 5.161

#### STATUTORY AUTHORITY

The new rules are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §534.052, which provides that the HHSC executive commissioner shall adopt rules necessary and appropriate to ensure the adequate provision of community-based services through a local intellectual and developmental disability authority, and §533.0355, which provides that the HHSC executive commissioner shall adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities.

The new rules affect Texas Government Code, §531.0055; Texas Human Resources Code §161.021; and Texas Health and Safety Code §534.052 and §533.0355.

§5.151. *Purpose.*

The purpose of this subchapter is to describe the criteria to be used and the process to be followed:

(1) by an authorized provider employed by or contracting with a local intellectual and developmental disability authority (LIDDA) or a state supported living center (SSLC), to conduct a diagnostic assessment for intellectual disability, autism spectrum disorder (ASD), and a related condition;

(2) by a LIDDA or SSLC, to review a determination of intellectual disability or a diagnosis of ASD, or related condition for endorsement; and

(3) by DADS, to approve an employee of a LIDDA or an SSLC as a certified authorized provider.

§5.153. *Definitions.*

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.

(2) Adaptive behavior level--The categorization of an individual's functioning level of adaptive behavior into one of four levels ranging from mild limitations (I) through profound limitations (IV).

(3) Authorized provider--A person who is:

(A) a physician licensed to practice in Texas;

(B) a psychologist licensed to practice in Texas; or

(C) a certified authorized provider.

(4) ASD--Autism spectrum disorder. As described in the DSM-5, a disorder characterized by persistent impairment in reciprocal social communication and social interaction, and restricted, repetitive patterns of behavior, interests, or activities. These symptoms are present from early childhood and limit or impair everyday functioning.

(5) Certified authorized provider--A person who is designated in accordance with §5.161 of this subchapter (relating to Certified Authorized Provider).

(6) Commissioner--The commissioner of DADS.

(7) DADS--The Department of Aging and Disability Services.

(8) Developmental period--The period of time between birth and 18 years of age.

(9) Diagnostic assessment--An assessment, including a DID, conducted to determine if an individual meets the criteria for a diagnosis of intellectual disability, autism spectrum disorder, or a related condition.

(10) DID (determination of intellectual disability)--An assessment conducted in accordance with §5.155 of this title (relating to Determination of Intellectual Disability (DID)) by an authorized provider to determine if an individual meets the criteria for a diagnosis of intellectual disability.

(11) DSM--The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.

(12) Individual--A person who is the subject of a diagnostic assessment or who has been determined to be in the LIDDA priority population.

(13) Intellectual disability--Consistent with THSC, §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(14) LAR (legally authorized representative)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may be a parent, guardian, or managing conservator of a minor individual, a guardian of an adult individual, or a personal representative of a deceased individual.

(15) LIDDA--Local intellectual and developmental disability authority. An entity designated in accordance with THSC §533.035(a).

(16) LIDDA services--Services provided by or through a LIDDA that are funded with general revenue pursuant to a performance contract with DADS.

(17) LIDDA priority population--A group comprised of persons who meet one or more of the following descriptions:

(A) a person with an intellectual disability;

(B) a person with autism spectrum disorder;

(C) a person with a related condition on the DADS-approved list of related conditions who is eligible for and enrolling in services in the Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID) Program, the Home and Community-based Services (HCS) Program, or the Texas Home Living (TxHmL) Program;

(D) a nursing facility resident who is eligible for specialized services for an intellectual disability or a related condition pursuant to §1919(e)(7) of the Social Security Act (United States Code, Title 42, §1396r(e)(7));

(E) a child who is eligible for Early Childhood Intervention services through the Department of Assistive and Rehabilitative Services; or

(F) a person diagnosed by an authorized provider as having a pervasive developmental disorder through a diagnostic assessment completed before November 15, 2015.

(18) Pervasive developmental disorder--A severe and pervasive impairment in the developmental areas of reciprocal social interaction skills or communication skills, or the presence of stereotyped behaviors, interests, and activities manifested during the developmental period, usually before 10 years of age.

(19) Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1010, a severe and chronic disability that:

(A) is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with an intellectual disability, and requires treatment or services similar to those required for those persons with an intellectual disability;

(B) is manifested before the person reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(20) Residential care facility--A facility defined in THSC, §591.003.

(21) Significantly subaverage general intellectual functioning--Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(22) SSLC--State supported living center. A facility operated by DADS, including the intermediate care facility for individuals with an intellectual disability component of the Rio Grande State Center, that provides services, including residential services, to individuals with a profound or severe intellectual disability or an intellectual disability with intensive medical or behavioral needs.

(23) THSC--Texas Health and Safety Code.

§5.154. Use of Information from a Diagnostic Assessment.

(a) A LIDDA uses information from a DID or endorsement of a DID conducted in accordance with this subchapter to determine an individual's eligibility for LIDDA services.

(b) DADS uses information from a DID or endorsement of a DID conducted in accordance with this subchapter to determine an individual's eligibility for certain services and supports provided through DADS or the Health and Human Services Commission.

(c) An individual may receive the following time-limited services without being determined eligible for the service:

(1) emergency services provided in accordance with THSC, §593.027 or §593.0275;

(2) respite care in a residential care facility provided in accordance with THSC, §593.028; and

(3) services in an SSLC ordered in accordance with Texas Family Code, §55.33 or §55.52.

§5.155. Determination of Intellectual Disability (DID).

(a) As permitted by THSC, §593.004, an individual or the individual's LAR may make a written request for a DID to:

(1) the LIDDA serving the area in which the individual resides;

(2) a psychologist licensed to practice in Texas; or

(3) a physician licensed to practice in Texas.

(b) An approved provider at an SSLC may conduct a DID only for an individual receiving services from that SSLC.

(c) At a LIDDA or SSLC, only the following persons may conduct a DID:

(1) a psychologist licensed to practice in Texas who is employed by or contracting with the LIDDA or SSLC and who has completed:

(A) graduate course work in assessing individual intellectual and adaptive behavior for individuals with an intellectual disability or developmental disability; or

(B) one year of supervised experience in assessing individual intellectual and adaptive behavior for individuals with an intellectual disability or developmental disability;

(2) a physician licensed to practice in Texas who is employed by or contracting with the LIDDA or SSLC and who has completed:

(A) one year of employment experience in the field of intellectual disability; and

(B) an internship or residency that includes specialized training in assessing individual intellectual and adaptive behavior or 12 hours of specialized continuing education in assessing individual intellectual and adaptive behavior; or

(3) a certified authorized provider employed by the LIDDA or SSLC.

(d) In conducting a DID, an authorized provider employed by or contracting with a LIDDA or SSLC must:

(1) use the *Best Practices Guidelines*, available at [www.dads.state.tx.us](http://www.dads.state.tx.us);

(2) interview the individual; and

(3) perform a diagnostic assessment that, at a minimum, includes:

(A) a standardized measure of the individual's intellectual functioning using the most appropriate test based on the characteristics of the individual;

(B) a standardized measure of the individual's adaptive behavior level;

(C) a review of evidence supporting the origination of intellectual disability during the individual's developmental period, which includes, as available:

(i) reports concerning the cause of the suspected intellectual disability;

(ii) results of all relevant assessments;

(iii) types of services the individual has received or is receiving;

(iv) reports by other people, including the individual's family members and friends; and

(v) educational records; and

(D) a review of the individual's previous and current psychological and psychiatric treatments and diagnoses, as available.

(e) An authorized provider employed by or contracting with a LIDDA or SSLC must conduct the interview and assessment described in subsection (d) of this section using diagnostic techniques and appropriate accommodations adapted to the individual's age; cultural background; ethnic origins; language; and physical, behavioral, or sensory capabilities.

(f) A previous assessment, social history, or relevant record from another entity, including a school district, public or private agency, or another authorized provider, may be used to meet the requirements in subsection (d)(3)(A) or (B) of this section if the authorized provider employed by or contracting with the LIDDA or SSLC who is conducting the DID considers the assessment, social history, or relevant record to be a valid reflection of the individual's current level of functioning.

(g) An authorized provider employed by or contracting with a LIDDA or SSLC must complete a written report of the DID that is dated, signed, and includes the license number and, if applicable, the certification number of the authorized provider. The written report must contain:

(1) background information summarizing the individual's:

(A) developmental history, including a description of the evidence of origination of intellectual disability during the individual's developmental period; and

(B) previous and current psychological and psychiatric treatments and diagnoses;

(2) results of current intellectual and adaptive behavior assessments, including:

(A) instrument names;

(B) composite or full scale scores;

(C) cluster, area, and specific or subscale scores, if available; and

(D) overall intellectual functioning and adaptive behavior level;

(3) a narrative description of:

(A) test results, including the individual's relative strengths and weaknesses;

(B) testing conditions, including any accommodations provided or technology used; and

(C) any relevant negative impact on the test results because of the individual's:

(i) cultural background;

(ii) primary language;

(iii) communication style;

(iv) physical or sensory impairments;

(v) motivation;

(vi) attentiveness; and

(vii) emotional factors;

(4) conclusions and diagnoses, including applicable diagnostic codes; and

(5) recommendations, including a statement of:

(A) whether the individual has an intellectual disability; and

(B) if the individual does not have an intellectual disability, whether the individual has:

(i) autism spectrum disorder as described in §5.157 of this title (relating to Autism Spectrum Disorder); or

(ii) a related condition as described on the DADS-approved list of related conditions.

(h) An authorized provider employed by or contracting with a LIDDA or SSLC must provide the written report to the person who requested the DID within 30 days after completing the interview and assessment described in subsection (d) of this section.

(i) If the DID is conducted at a LIDDA or SSLC, the LIDDA or SSLC must:

(1) inform the person who requested the DID, orally and in writing, of the right to:

(A) an additional, independent DID to be conducted at the person's expense if the person questions the validity or results of the DID; and

(B) an administrative hearing to contest the findings of the DID, as described in Chapter 4, Subchapter D of this title (relating to Administrative Hearings under the THSC, Title 7, Subtitle D); and

(2) document that the person who requested the DID was informed orally and in writing of these rights.

(j) If a DID has been ordered by a court for guardianship proceedings, the authorized provider employed by or contracting with a LIDDA or SSLC who conducts the DID:

(1) must submit the written findings and recommendations as specified in the court's order; and

(2) may submit a current capacity assessment of the individual (i.e., DADS Form 2190, available on DADS website at [www.dads.state.tx.us](http://www.dads.state.tx.us)).

#### §5.156. Review and Endorsement of a DID.

(a) Except as provided in subsection (c) of this section, if an individual has been determined to have an intellectual disability, ASD, or a related condition on the DADS-approved list of related conditions, by an authorized provider who is not employed by or contracting with the LIDDA at which the individual or the individual's LAR is seeking services, the LIDDA must ensure that:

(1) the DID report is reviewed by an authorized provider employed by or contracting with the LIDDA; and

(2) the authorized provider conducting the review interviews the individual.

(b) Except as provided in subsection (c) of this section, if an individual has been determined to have an intellectual disability or ASD by an authorized provider who is not employed by or contracting with the SSLC at which the individual is receiving services, the SSLC must ensure that:

(1) the DID report is reviewed by an authorized provider employed by or contracting with the SSLC; and

(2) the authorized provider conducting the review interviews the individual.

(c) An authorized provider employed by or contracting with a LIDDA or SSLC:

(1) may, but is not required to, review or endorse a diagnostic assessment conducted by another authorized provider employed or contracted by a LIDDA or SSLC; and

(2) must not endorse a DID conducted by that authorized provider.

(d) If a DID report reviewed in accordance with subsection (a) or (b) of this section is endorsed by the authorized provider as a valid reflection of the individual's current level of functioning, the authorized provider must, within 30 days after the review is completed:

(1) document the outcome of the review; and

(2) inform the individual or the individual's LAR orally and in writing of the outcome of the review.

(e) If a DID report reviewed in accordance with subsection (a) or (b) of this section is not endorsed by the authorized provider as a valid reflection of the individual's current level of functioning, the authorized provider must, within 30 days after the review is completed:

(1) document outcome of the review; and

(2) inform the individual or the individual's LAR orally and in writing of:

(A) the outcome of the review; and

(B) the opportunity to have an authorized provider employed by or contracting with the LIDDA or SSLC conduct a diagnostic assessment at no expense to the individual or the individual's LAR.

#### §5.157. Autism Spectrum Disorder (ASD).

(a) If an individual is determined not to have an intellectual disability, an authorized provider employed by or contracting with a LIDDA may use information from the DID to assist in establishing the individual's eligibility for LIDDA services based on the existence of autism spectrum disorder (ASD).

(b) The diagnostic assessment report must include information about the date of onset and a description of the individual's deficits, behaviors, and current functioning level that support the criteria for ASD described in the current DSM.

#### §5.158. Related Condition (RC).

If an individual is determined not to have an intellectual disability, an authorized provider employed by or contracting with a LIDDA may use information from the DID to assist in establishing the individual's eligibility for certain Medicaid services based on the existence of a related condition on the DADS-approved list of related conditions available at [www.dads.state.tx.us](http://www.dads.state.tx.us) and §9.238 of this title (relating to ICF/MR Level of Care I Criteria) or §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria).

#### §5.161. Certified Authorized Provider.

(a) A LIDDA or SSLC may apply for an employee of the LIDDA or SSLC who is not a licensed psychologist or physician to be designated a certified authorized provider by submitting:

(1) a request for designation as a certified authorized provider to DADS commissioner or designee as described at [www.dads.state.tx.us](http://www.dads.state.tx.us);

(2) documentation of the employee's:

(A) current employment with the LIDDA or SSLC;

(B) current licensure as:

(i) a provisionally licensed psychologist;

(ii) a licensed psychological associate (LPA); or

(iii) a licensed specialist in school psychology

(LSSP);

(C) successful completion of graduate course work in individual intellectual assessment;

(D) supervised experience or successful completion of graduate course work in adaptive behavior assessment; and

(E) one year of employment, internship, or practicum in the field of intellectual disability.

(b) The DADS commissioner or designee reviews the documentation submitted in accordance with subsection (a) of this section.

(1) If the employee is approved, DADS commissioner or designee issues a certificate designating the employee as a certified authorized provider of the requesting LIDDA or SSLC.

(2) If the employee is not approved, DADS commissioner or designee notifies the requesting LIDDA or SSLC of the determination and the reasons why.

(c) A certified authorized provider is permitted to conduct a diagnostic assessment in accordance with this subchapter only while functioning as an employee of the requesting LIDDA or SSLC.

(d) A person's designation as a certified authorized provider remains valid only if:

(1) the person remains employed by the requesting LIDDA or SSLC; and

(2) the person maintains active licensure status as described in subsection (a)(2)(B) of this section, unless the person has documentation to evidence the person was designated as a TDMHMR-certified psychologist before March 31, 2002.

(e) A LIDDA or SSLC that employs a certified authorized provider must ensure the designation of the certified authorized provider is valid in accordance with subsection (d) of this section.

(f) DADS may, at any time, revoke a person's designation as a certified authorized provider.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

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Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 438-3532



## CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §9.151, concerning purpose, §9.152, concerning application, §9.153, concerning definitions; §9.154, concerning description of the home and community-based services (HCS) program; §9.155, concerning eligibility criteria and suspension of HCS Program services; §9.158, concerning process for enrollment of applicants; §9.159, concerning individual plan of care (IPC); §9.160, concerning DADS' review of a proposed IPC; §9.161, concerning level of care (LOC) determination; §9.162, concerning lapsed LOC; §9.163, concerning LON assignment; §9.166, concerning renewal and revision of an IPC; §9.167, concerning permanency planning; §9.168, concerning CDS option; §9.170, concerning reimbursement; §9.171, concerning DADS review of a program provider and residential visit; §9.174, concerning certification principles: service delivery; §9.177, concerning certification principles: staff member and service provider requirements; §9.178, concerning certification principles: quality assurance; §9.186, concerning program provider's right to administrative hearing; §9.188, concerning DADS approval of residences; §9.189, concerning referral to DFPS; §9.190, concerning local authority requirements for providing service coordination in the HCS program; §9.191, concerning MRA compliance review; and §9.192, concerning service limits; new §9.157, concerning HCS interest list; and the repeal of §9.157, concerning maintenance of HCS program interest list, in Subchapter D, Home and Community-based Services (HCS) Program; amendments to §9.551, concerning purpose; §9.552, concerning application; §9.553, concerning definitions; §9.554, concerning description of the TxHmL program; §9.555, concerning definitions of TxHmL program services service components; §9.556, concerning eligibility criteria; §9.558, concerning individual plan of care (IPC); §9.560, concerning level of care (LOC) determination; §9.561, concerning lapsed level of care (LOC); §9.562, concerning level of need (LON) assignment; §9.563, concerning DADS review of level of need (LON); §9.567, concerning process for enrollment; §9.568, concerning revisions and renewals of individual plans of care (IPCs), levels of care (LOCs), and levels of need (LONs) for enrolled individuals; §9.570, concerning termination and suspension of TxHmL program services; §9.573, concerning reimbursement; §9.574, concerning record retention; §9.577, concerning program provider compliance and corrective action; §9.578, concerning program provider certification principles: service delivery; §9.579, concerning certification principles: qualified personnel; §9.580, concerning certification principles: quality assurance; §9.582, concerning compliance with TxHmL program principles for local authorities; §9.583, concerning TxHmL program principles for local authorities; new §9.566, concerning TxHmL interest list; and the repeal of §9.566, concerning notification of applicants, in Subchapter N, Texas Home Living (TxHmL), in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities.

### BACKGROUND AND PURPOSE

The proposed rules implement an amendment to the HCS waiver application, approved by the Centers for Medicare and Medicaid Services (CMS), that requires DADS to make transition assistance services (TAS) available as a new service in the HCS Program and allows an individual to receive pre-enrollment minor home modifications (MHMs) and a pre-enrollment MHMs assessment. TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments are available to applicants enrolling in the HCS Program and being discharged from a nursing facility (NF),

an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), or a general residential operation (GRO) (a child-care facility regulated by the Department of Family and Protective Services).

TAS assists an applicant who is moving out of certain institutions in setting up a household in the community. Examples of TAS are payment for a security deposit on a lease or the purchase of essential home furnishings. The proposed rules state that an applicant who is not going to receive residential support, supervised living, or host home/companion care may receive up to \$2,500 of TAS. This limit is included in the waiver application and is consistent with DADS rules in Chapter 62, Transition Assistance Services, for applicants leaving certain institutions and enrolling into waiver programs other than the HCS Program. In addition, the proposed rules state that an applicant who is going to receive residential support, supervised living, or host home/companion care may receive up to \$1,000 of TAS. This lower limit is created for applicants who are going to receive residential support, supervised living, or host home/companion care because those settings are partially established by the HCS Program provider or host home service provider. The proposed rules state that an applicant enrolling into the HCS Program may receive TAS only once in the individual's lifetime. This limit will be consistent with DADS TAS rules in Chapter 62 that apply to the Deaf Blind with Multiple Disabilities Program, the Community Living Assistance and Support Services Program, and the Medically Dependent Children Program.

Pre-enrollment MHMs are modifications to a home that are completed before an applicant is enrolled in the HCS Program and pre-enrollment MHMs assessments are the related assessments conducted by a licensed or certified professional needed for authorization of the modifications. These options help ensure that, at the time the applicant moves to a community setting, the setting protects the individual's health, welfare, and safety. The type of pre-enrollment MHMs allowed are the same as those allowed for an individual already enrolled in the HCS Program.

To help ensure that applicants are qualified for TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments, and that these services are properly authorized by DADS, the proposed rules require a service coordinator to determine whether an applicant meets the criteria specified in the rules to receive TAS or pre-enrollment MHMs. If the applicant meets the criteria, the proposed rules require the service coordinator to complete a DADS form specifying the TAS the applicant needs and an estimate of the cost of the TAS, and a DADS form specifying the pre-enrollment MHMs the applicant needs, the pre-enrollment MHMs assessments conducted, the cost of the pre-enrollment MHMs to be completed, and the cost of the MHMs assessments conducted.

The proposed rules require the service coordinator to submit the completed forms to DADS for authorization, send the forms authorized by DADS to the selected program provider, and include the TAS, the pre-enrollment MHMs, and pre-enrollment MHMs assessments on the applicant's proposed initial individual plan of care (IPC).

The proposed rules clarify that the provision of TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments are exceptions to the prohibition on an HCS Program provider providing services before an applicant is enrolled in the HCS Program. The proposed rules also clarify that the payment for TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments is an exception to the prohibition on DADS paying for a service if the ap-

plicant is residing in an institution or the applicant is not enrolled in the HCS Program. The proposed rules also state that, subject to the requirements in the *HCS Program Billing Guidelines*, DADS pays for pre-enrollment MHMs and pre-enrollment MHMs assessments regardless of whether the applicant enrolls with the program provider. This provision is included so that a provider is ensured of being reimbursed for costs incurred in completing the modifications even if the applicant is unable or chooses not to enroll in the HCS Program.

To ensure that TAS and pre-enrollment MHMs are completed in a timely manner, the proposed rules require a program provider to complete these services at least two days before the date of the applicant's discharge from the NF, ICF/IID, or GRO, unless the delay in completion is beyond the control of the program provider. In addition, the proposed rules establish documentation and notification requirements for a program provider so the applicant or legally authorized representative (LAR) and service coordinator are kept apprised of the progress toward completion or delivery of the services.

The proposed rules also include qualifications for a service provider of TAS, which are consistent with the HCS waiver application, and require, if a program provider contracts with a person to provide TAS (as opposed to employing the person), that the contractor has a contract to provide TAS in accordance with Texas Administrative Code, Title 40, Chapter 49, Contracting for Community Services. These requirements help ensure that service providers of TAS have sufficient expertise to provide this service.

The proposed rules replace "local authority" with "LIDDA" throughout Chapter 9, Subchapters D and N. These changes are consistent with Senate Bill (S.B.) 7, 83rd Legislature, Regular Session, 2013, which added §534.001 of the Government Code, and uses "local intellectual and developmental disability authority" for the "local mental retardation authority" defined in Texas Health and Safety Code, §531.002(11) and S.B. 219, 84th Legislature, Regular Session, 2015, which added THSC, §533A.035, Local Intellectual and Developmental Disability Authorities, and provides for the executive commissioner of the Health and Human Services Commission (HHSC) to designate a LIDDA in one or more local service areas.

The proposed rules implement a DADS initiative to help ensure that the transition of an individual 21 years of age or older moving from an NF and enrolling in the HCS or TxHmL Program is successful. DADS first addressed this initiative through proposed rules in Chapter 17, Preadmission Screening and Resident Review (PASRR), and Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, published in the April 3, 2015, issue of the *Texas Register*. Based on the proposed requirements in Chapters 17 and 19, the proposed rules require: 1) an HCS and TxHmL program provider to participate as a member of the service planning team (SPT) while the applicant resides in the NF and for 180 days after the individual enrolls; 2) a program provider to notify the SPT of any event or condition that may put the individual at risk of admission or readmission to a NF within one calendar day after becoming aware of the event or condition; 3) a service coordinator to conduct pre-move site reviews and post-move monitoring visits; 4) a program provider to be physically present for the pre-move site review and each post-move monitoring visit and to assist the service coordinator during the review or visit as requested; and 5) a program provider to assist in implementation of an applicant's or individual's transition plan. The proposed rules define "pre-move site



review," "post-move monitoring visit," "specialized services," and "transition plan." In addition, for an individual who has enrolled in the HCS or TxHmL Program as a diversion from admission to an NF, the proposed rules require a program provider to participate as a member of the SPT for 180 days after enrollment. The proposed rules amend the definition of "service planning team" because the composition of the team will depend on the applicant or individual. The proposed rules require a service coordinator, at least monthly, to have one face-to-face contact with an individual whose HCS or TxHmL Program services have not been suspended to provide service coordination. This change is made to ensure regular communication with the individual's service coordinator necessary to monitor the individual's status and help individuals meet the eligibility requirement in the HCS and TxHmL waiver applications that they receive a waiver service at least monthly or receive monthly monitoring.

The proposed rules also describe DADS current practices regarding maintaining the HCS interest list and the TxHmL interest list and the making and withdrawing offers of HCS and TxHmL Program services. Before January 1, 2015, there was not a separate interest list for the TxHmL Program. DADS authorized the offer of TxHmL services to persons on the HCS interest list. On January 1, 2015, the TxHmL interest list was created and includes the names of all applicants on the HCS interest list who had not been offered TxHmL Program services as of December 21, 2014. The proposed HCS rules clarify that DADS sends notice to an applicant when an offer for services is withdrawn, not when the applicant's name is removed from the list. The proposed amendment deletes the category of applicants earliest on the local service area interest list in describing those applicants to whom the LIDDA offers HCS Program services because funding has not been appropriated to offer services by local service area.

The proposed rules require DADS to keep the name of a military family member who resides out of state on the HCS or TxHmL interest list for up to one year after the military member's active duty ends. Ordinarily, a person who resides out of state is not permitted to be on the HCS or TxHmL interest list. The proposed rules define "military member" and "military family member" to describe what these terms mean when used in the rules.

To be consistent with DADS practice in other waiver programs, the proposed rules describe the conditions under which an individual's name may be reinstated on the HCS or TxHmL interest list after being removed and how an interest list request date is assigned, including that DADS reinstates an individual's name to the interest list with the original request date if a request to reinstate is received by the LIDDA within 90 calendar days after the individual's name was removed from the list. The proposed rules also describe the notification the individual or LAR receives from DADS regarding the reinstatement.

Further, the proposed rules require the LIDDA to withdraw an offer of HCS or TxHmL services if the applicant or LAR does not complete necessary activities to finalize the enrollment process and DADS has approved the withdrawal of the offer. The requirement for a LIDDA to withdraw an offer under this circumstance was included to help ensure that enrollment into the HCS or TxHmL Program is completed in a timely manner and includes DADS approval of the withdrawal to promote consistency in the making of these decisions. The proposed rules repeal §9.157, Maintenance of HCS Program Interest List, and replace it with the proposed new §9.157, HCS Interest List. The proposed rules

repeal §9.566, Notification of Applicants, and relocate the rules to the beginning of §9.567, Enrollment.

The proposed rules add a reference to additional requirements the service coordinator must comply with during the process of enrollment in the TxHmL Program if the applicant or LAR chooses to participate in the Consumer Directed Services (CDS) option.

The proposed rules clarify an eligibility criterion for the HCS Program, specifically, that an applicant or individual must have an IPC cost for HCS Program services that does not exceed \$167,468 for an applicant or individual with a Level of Need (LON) 1, LON 5, or LON 8; \$168,615 for an applicant or individual with an LON 6; or \$305,877 for an applicant or individual with an LON 9, instead of describing the formula to reach that amount. The proposed rules make a similar clarification for one of the eligibility criterion for the TxHmL Program, specifically that an applicant or individual must have an IPC cost that does not exceed \$17,000. The proposed rules delete the statement that DADS does not approve an IPC having a total cost that exceeds the combined cost limit specified in Appendix C of the TxHmL Program waiver application approved by CMS because this requirement is addressed in the eligibility criteria in §9.556.

The proposed rules clarify that an applicant or individual is eligible for HCS Program services and TxHmL services if, in addition to other criteria, the applicant or individual is not enrolled in another waiver program or receiving a mutually excluded service identified in the Mutually Exclusive Services table located in the appendixes of the HCS Handbook available on DADS website.

The proposed rules replace the list of financial eligibility criteria for HCS Program services and TxHmL services with a reference to Appendix B of the HCS waiver application and the TxHmL waiver application approved by CMS and found on DADS website. This change is made because Appendix B can more easily be kept current to describe the financial eligibility criteria for each program.

To make consistent with DADS policy described in an Information Letter issued in October of 2014, the proposed HCS and TxHmL Program rules delete the definition of "non-routine circumstances" and change the description of respite to state that it is a service provided when an unpaid caregiver of an individual is temporarily unavailable to provide supports and to remove the requirement that it be planned, provided for emergency short-term relief, or based on the caregiver's unavailability due to non-routine circumstances. The proposed rules also state that one of the institutions in which an HCS Program provider must not provide respite is a "nursing facility" to clarify that this prohibition does not apply just to a "skilled nursing facility."

The proposed rules state current policy that an individual's HCS Program services and TxHmL Program services may be suspended if the individual is temporarily admitted to an assisted living facility.

The proposed rules delete the requirement that a service meet the "service definition" in describing circumstances under which DADS will not pay or will recoup payments from the program provider because DADS payment or recoupment is based on requirements in the HCS and TxHmL Billing Guidelines, including billable activities described in the guidelines.

The proposed rules for the HCS Program clarify that during the process of enrollment, the LIDDA must always complete an Intellectual Disability/Related Conditions (ID/RC) Assessment. This

clarification is made because the LIDDA must request a level of care (LOC) from DADS for an applicant at the time of enrollment by transmitting a completed ID/RC Assessment to DADS. To more accurately describe the chronology of activities performed, the proposed rules moves the requirement for a service coordinator to provide information to an applicant or LAR about all program providers in the LIDDA's local service area and to discuss the CDS option. The proposed rules clarify that the service coordinator, together with other members of the applicant's SPT (instead of just the applicant and LAR), must develop a proposed initial IPC for the applicant. These changes, in part, are made because the amended definition of SPT includes a program provider for an applicant 21 years of age or older residing in a NF and enrolling in the HCS Program.

The proposed rules clarify that a service coordinator is required to ensure that the initial proposed IPC includes a sufficient number of nursing units for an HCS Program provider's registered nurse to perform an initial nursing assessment only if an applicant or LAR chooses a program provider to deliver supported home living, nursing, host home/companion care, residential support, supervised living, respite, employment assistance, supported employment, or day habilitation.

The proposed rules for the HCS Program require the service coordinator to, within the time frame required to notify the SPT that the individual's PDP must be reviewed and updated, convene the SPT to review and update the individual's PDP. This change is made to promote the program provider's ability to ensure that a meeting between the SPT and the program provider takes place at least 30 but no more than 60 calendar days before the expiration of the individual's IPC to review the PDP and develop the proposed renewal IPC. The proposed rules, for an individual who is receiving all HCS Program services through the CDS option, and therefore does not have a program provider, require the service coordinator to perform the functions of the program provider described in the rules to renew and revise the individual's IPC.

The proposed rules require an HCS Program provider to ensure that there is an adequate supply of hot water at all times at sinks and bathing facilities for an individual receiving residential services and that the temperature of the hot water does not exceed 117 degrees Fahrenheit unless the program provider conducts a competency-based skills assessment to demonstrate that all individuals in the residence can independently regulate the temperature of the hot water from each sink and bathing facility in the residence. These requirements address an individual's health and safety by ensuring that hot water is available for hygiene purposes and at a temperature that will not injure the individual.

The proposed rules amend the description of the process to request a reinstatement of a lapsed LOC by no longer requiring an HCS provider (or for TxHmL, a LIDDA) to include a begin date on the ID/RC Assessment of the lapsed period. This amendment is made to address a planned change in DADS data system that will automate the begin date of the lapsed period as the date after the last day of the previously authorized period. The proposed rules also clarify that if DADS grants reinstatement of an LOC determination in the HCS Program, the period of reinstatement will be for a period of not more than 180 calendar days after the end date of the previously authorized LOC. Further, the proposed rules specify the current process for a LIDDA to request a reinstatement of a lapsed LOC in the TxHmL program including that the LIDDA must state on the ID/RC Assessment an end date of the LOC period that is not later than 365 calendar days after the end date of the previously authorized LOC period and ensure

that the ID/RC Assessment contains information that is identical to the information on the signed and dated ID/RC Assessment. Also, for consistency with rules for HCS, the proposed rules for TxHmL state that DADS notifies the LIDDA of its decision to grant or deny the request for reinstatement of an LOC determination within 45 calendar days after DADS receives the ID/RC Assessment from the LIDDA.

The proposed rules delete program provider requirements regarding providing a service in accordance with an authorized IPC and retaining certain documentation in the individual's record because these requirements are currently in or have been added to other sections of the HCS Program rules.

The proposed rules replace "dental services" with "dental treatment" to correct the name of this service, as used in the waiver application and in other sections of the HCS Program rules.

The proposed rules require an HCS Program provider to submit evidence of corrective action within a time period determined by DADS instead of submitting this evidence within fourteen calendar days after the date of a residential visit. This change is made to allow DADS to determine an appropriate time period based on the results from the residential visit and the circumstances needing correction.

The proposed rules require HCS and TxHmL program providers to ensure that a service provider of behavioral support completes training required by DADS, as described in the HCS Handbook. The purpose for this requirement is to improve the provision of behavioral support services.

The proposed rules delete the prohibition that a service provider of employment assistance or supported employment in the HCS and TxHmL Programs be the LAR of the individual. The proposed rules state that a service provider of employment assistance or supported employment may not be the spouse of the individual or a parent of the individual if the individual is a minor. This change ensures consistency with the HCS and TxHmL waiver applications.

The proposed rules for the HCS Program also include a requirement consistent with current policy that respite, if included on an IPC, must be within the service limit for respite described in the rules.

The proposed rules for HCS and TxHmL require a LIDDA, in the provision of service coordination, to ensure compliance with the requirements in Chapter 41 of this title and to employ service coordinators who have received training about Chapter 41. This change is made because Chapter 41 includes requirements for a service coordinator for individuals receiving services through the CDS option that are not included in the HCS Program rules. The proposed rules also clarify, in the requirement for a service coordinator to initiate, coordinate, and facilitate person-directed planning, that this requirement includes scheduling SPT meetings. The proposed rules clarify that supervised living and residential support are excluded from the requirement that an applicant's or individual's PDP state, for each HCS Program service, whether the service is critical to an individual's health and safety.

The proposed TxHmL rules clarify that a LIDDA must be in compliance with Chapter 2, Subchapter L, Service Coordination for Individuals with an Intellectual Disability, and with other requirements (in addition to §9.583) described in the subchapter. These changes make a LIDDA's compliance with the TxHmL Program principles similar to those in the HCS Program rules. The pro-

posed rules update the definition of "performance contract" in the TxHmL rules and add the definition in the proposed HCS rules.

The proposed rules delete the TxHmL certification principle that a LIDDA must ensure its employees and contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services because that is not a requirement for a LIDDA in the performance of its authority functions related to the TxHmL or HCS Program, including service coordination. If the LIDDA is a TxHmL program provider, it must comply with program provider requirements described in the rules, including ensuring that its employees and contractors possess legally necessary licenses, certifications, registrations, or other credentials before delivering services. The proposed rules also delete the requirements for a LIDDA (1) to ensure that a service coordinator submits a correctly completed request for authorization of payment from non-TxHmL Program sources for which an individual may be eligible; and (2) to integrate various aspects of services delivered under the TxHmL Program and through non-TxHmL Program sources because these requirements are obsolete.

The proposed rules amend the definition of "ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions," to clarify that this term includes a facility that is licensed in accordance with Texas Health and Safety Code, Chapter 252, or a facility certified by DADS.

The proposed rules update the terms used in the HCS and TxHmL Program rules, including replacing outdated terms with person-first respectful language.

The proposed rules make the application sections in Chapter 9, Subchapter D and N consistent by stating that the rules in each subchapter apply to persons applying for program services and their LARs and persons receiving program services and their LARs.

The proposed rules also make editorial changes for clarity, consistency, and accuracy.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §9.151 substitutes "LIDDA" for "MRA."

The proposed amendment to §9.152 substitutes "LIDDAs" for "MRAs" and clarifies that the subchapter applies to applicants and individuals and their LARs.

The proposed amendment to §9.153 reformats the section and adds definitions of "CMS--Centers for Medicare and Medicaid Services," "GRO," "LIDDA--local intellectual and developmental disability authority," "military member," "military family member," "performance contract," "post-move monitoring visit," "pre-enrollment minor home modifications," "pre-enrollment minor home modifications assessment," "pre-move site review," "relative," "specialized services," "TAS," "THSC--Texas Health and Safety Code," and "transition plan." The proposed amendment amends the definition of "HCS Program," "ICF/IID," "ID/RC Assessment," "implementation plan," "intellectual disability," "nursing facility," "PDP (person-directed plan)," "permanency planning review screen," "program provider," "revised IPC," "service coordinator," and "service planning team." The proposed amendment deletes the definition of "local authority," "MRA," "MR/RC Assessment," "non-routine circumstances," and "primary correspondent."

The proposed amendment to §9.154, in the list of services available under the HCS Program, reformats the section and adds TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments as services delivered before enrollment. The proposed amendment makes the description of the CDS option consistent with the definition in Chapter 41 of this title and updates terms used in the subchapter by replacing "Centers for Medicare and Medicaid Services" with "CMS," "local authority" with "LIDDA," and "program provider agreement" with "contract." The proposed amendment also makes minor clarifying editorial changes.

The proposed amendment to §9.155 reformats the section to replace the financial eligibility criteria listed in subsection (b) with a reference to Appendix B of the HCS Program waiver application approved by CMS and found on DADS website. The proposed amendment clarifies the IPC cost limits for an applicant or individual to be eligible for HCS Program services by replacing a description of the formula used to reach the cost limits with the specific dollar amounts for an applicant or individual. The proposed amendment clarifies that an applicant or individual is eligible for HCS Program services if the applicant or individual is not enrolled in another waiver program and is not receiving a mutually excluded service identified in the Mutually Exclusive Services table in Appendix II of the HCS Handbook. The proposed amendment clarifies that an individual's HCS Program services may be suspended if the individual is temporarily admitted to an assisted living facility. The proposed amendment replaces "Texas Health and Safety Code" with "THSC."

The proposed new §9.157 requires a LIDDA to maintain an up-to-date interest list of applicants interested in receiving HCS Program services for whom the LIDDA is their designated LIDDA in DADS data system and states that a person may request that an applicant's name be added to the HCS interest list by contacting the LIDDA serving the Texas county in which the applicant or person resides. The proposed new section also states that if a request is made in accordance with the new section, a LIDDA adds an applicant's name to the HCS interest list (1) if the applicant resides in Texas; and (2) with an interest list request date of the date the request is received. The proposed new rule also state how DADS assigns an interest list request date for an individual added to the interest list who is determined diagnostically or functionally ineligible for another DADS waiver program and for an individual under 22 years of age in a nursing facility. The proposed new rule describes the conditions under which an individual's name may be removed from the HCS interest list. The proposed new rule describes the conditions under which an individual's name may be reinstated on the HCS interest list after being removed, how an interest list request date is assigned, and the notification the individual or LAR receives from DADS regarding the reinstatement.

The proposed amendment to §9.158 updates terminology by replacing "local authority" with "LIDDA," "offer of program vacancy" with "offer of HCS Program services," and "registration date" with "interest list request date." The proposed amendment deletes applicants whose registration date is earliest on the local service area interest list as one of the three categories of applicants to whom a LIDDA offers HCS Program services. In requiring the LIDDA to make an offer of program services to an applicant, the proposed amendment deletes reference to an applicant who is currently receiving services in a state supported living center or a state mental health facility and, instead, references a target group identified in the approved HCS waiver application. The proposed amendment updates the requirements for a writ-

ten statement the LIDDA must include in a written offer to an applicant on the statewide interest list and deletes the requirement to remove from the interest list the name of an applicant who is under 22 years of age and resides in an institution. The proposed amendment requires the LIDDA to withdraw an offer of HCS Program services if the applicant or LAR does not complete the necessary activities to finalize the enrollment process and DADS has approved the withdrawal of the offer. The proposed amendment deletes the phrase "and removes the applicant's name from the HCS Program interest list" when addressing notification to applicants about withdrawing an offer. The proposed amendment deletes the requirement for the LIDDA to include, in the notification that an offer of HCS Program services is withdrawn, a statement that the name of an applicant who is under 22 years of age and residing in an institution will be placed on the interest list with a new registration date and, that other applicants may request to have their names placed on the list with a new registration date. If the LIDDA withdraws an offer, the proposed amendment deletes the requirement for a LIDDA to coordinate with DADS to ensure the applicant's name is placed on the interest list based on the date of the LIDDA's notification. The proposed amendment deletes the condition that a LOC determination be necessary before the LIDDA must complete an ID/RC Assessment. The proposed amendment relocates, to earlier in the section, the current requirements for a service coordinator to provide information to an applicant or LAR for all program providers in the LIDDA's local service area and to discuss the CDS option. The proposed amendment states that the service coordinator, "together with other members of the applicant's SPT," instead of just with the applicant or LAR, must develop a proposed initial IPC for the applicant. The proposed amendment requires the service coordinator, after an applicant chooses a program provider during enrollment, to determine whether the applicant meets the specified criteria to receive TAS; and, if so, complete, with the applicant or LAR, the required DADS form to identify the TAS needed; estimate the monetary amount for TAS; submit the completed form to DADS for authorization; send the form authorized by DADS to the selected program provider; and include the TAS and the monetary amount authorized by DADS on the applicant's proposed initial IPC. The proposed amendment also requires the service coordinator to determine whether an applicant meets the specified criteria to receive pre-enrollment MHMs and pre-enrollment MHMs assessments; if an applicant meets the criteria, complete, with the applicant or LAR and selected program provider, the required DADS form to identify the pre-enrollment MHMs the applicant needs, the pre-enrollment MHMs assessments conducted, the cost of the pre-enrollment MHMs to be completed, and the cost of the MHMs assessments conducted; submit the completed form to DADS for authorization; send the form authorized by DADS to the selected program provider; and include the identified services and the monetary amount authorized by DADS on the applicant's proposed initial IPC. The proposed amendment clarifies that a service coordinator must ensure that the initial proposed IPC includes a sufficient number of nursing units for a program provider's RN to perform an initial nursing assessment if an applicant or LAR chooses a program provider to deliver supported home living, nursing, host home/companion care, residential support, supervised living, respite, employment assistance, supported employment, or day habilitation. The proposed amendment states that an exception to the requirement that a selected program provider not initiate services until notified of DADS approval of the applicant's enrollment is the provision of pre-enrollment MHMs and pre-enrollment MHMs assessments. The proposed amendment states

that the referenced forms are available at DADS website, instead of contacting DADS by mail, and adds forms used to authorize TAS and pre-enrollment MHMs and pre-enrollment MHMs assessments to the list of forms available. The proposed amendment reformats the section and updates cross-references.

The proposed amendment to §9.159 replaces "local authority" with "service coordinator" in the requirement to initiate development of a proposed initial IPC for an applicant. The proposed amendment replaces "dental services" with "dental treatment." The proposed amendment reformats the section and requires, if the IPC includes (1) TAS, that the TAS to be supported by the form DADS uses to authorize TAS and are within the specified service limit for TAS; (2) pre-enrollment MHMs, that the MHMs be supported by a written assessment from a licensed professional as specified by DADS in the HCS Program Billing Guidelines and the form DADS uses to authorize the pre-enrollment MHMs, and are within the specified service limit for pre-enrollment MHMs; (3) pre-enrollment MHMs assessments, that the assessments be supported by the form DADS uses to authorize the assessments; and (4) respite, that the service is within the specified service limit for respite. The proposed amendment deletes the requirement contained elsewhere in the rules for a program provider to (1) provide an HCS Program service (other than one provided through the CDS option) in accordance with an individual's authorized IPC, and (2) retain in an individual's record the results and recommendations of individualized assessments that support the individual's current need for each service included in the IPC .

The proposed amendment to §9.160 changes the section title, replaces "MRA" with "LIDDA," "ICF/MR" with "ICF/IID Program," and makes a minor editorial change.

The proposed amendment to §9.161 replaces "local authority" with "LIDDA" and makes a minor editorial change.

The proposed amendment to §9.162 requires a program provider to request reinstatement of an LOC determination by completing an ID/RC Assessment signed and dated by the program provider; include on the ID/RC Assessment an end date of the LOC period that is not later than 365 calendar days after the end date of the previously authorized LOC period; and within 180 calendar days after the end date of the previously authorized LOC period, electronically transmit to DADS the completed ID/RC Assessment. The proposed amendment states that DADS notifies the program provider of its decision to grant or deny the request for reinstatement of an LOC determination within 45 calendar days after DADS receives the ID/RC Assessment from the program provider. If DADS grants a reinstatement, the period of reinstatement will be for a period of not more than 180 calendar days after the end date of the previously authorized LOC period. The proposed amendment replaces "local authority" with "LIDDA," "MR/RC Assessment" with "ID/RC Assessment," and "CARE" with "DADS data system."

The proposed amendment to §9.163 replaces "MRA" with "LIDDA," "MR/RC Assessment" with "ID/RC Assessment," and "CARE" with "DADS data system." The proposed amendment updates a section title and makes a minor editorial change.

The proposed amendment to §9.166 requires the service coordinator to, at least 60 but no more than 90 calendar days before the expiration of an individual's IPC, notify the SPT that an individual's PDP must be reviewed and updated and to convene an SPT meeting to review and update the individual's PDP. For

an individual who is receiving all HCS Program services through the CDS option, the proposed amendment requires the service coordinator to perform the functions of the program provider that are required to renew and revise the individual's IPC.

The proposed amendment to §9.167 corrects the age range for permanency planning to be consistent with state law (under 22 years of age) and replaces "MRA" with "LIDDA" and "CARE" with "DADS data system."

The proposed amendment to §9.168 replaces "local authority" with "service coordinator" as the person who must provide required information to an applicant or LAR regarding the CDS option, and replaces "local authority's" with "LIDDA's."

The proposed amendment to §9.170 reformats the section and describes the basis for DADS to pay a program provider for TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments. Payment for TAS is based on the DADS form used to authorize the TAS and the actual cost of the TAS, as evidenced by purchase receipts required by the *HCS Program Billing Guidelines*. Payment for pre-enrollment MHMs and pre-enrollment MHMs assessments is based on the DADS form used to authorize these services and the actual cost of these services, as evidenced by documentation required by the *HCS Program Billing Guidelines*. The proposed amendment allows DADS to pay for pre-enrollment MHMs and pre-enrollment MHMs assessments, subject to the requirements in the *HCS Program Billing Guidelines* and regardless of whether the applicant enrolls with the program provider. The proposed amendment describes exceptions to when DADS does not pay the program provider for a service or recoups payment made to the program provider regarding the provision of TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments. The proposed amendment allows DADS not to pay a program provider or recoup any payments made to the program provider for TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments if these services are not provided in accordance with the DADS form used to authorize these services. The proposed amendment deletes the condition of a service not meeting the service definition in describing conditions in which DADS will not pay or will recoup payments from the program provider.

The proposed amendment to §9.171 requires the program provider to submit evidence of corrective action within a time period determined by DADS, instead of within fourteen calendar days after the date of a residential visit.

The proposed amendment to §9.174 establishes that MHMs are limited to the categories listed in the rule and lists repair and maintenance not covered by a warranty as one of the five categories. The proposed amendment requires a program provider to maintain in an individual's record the results and recommendations from individualized assessments that support the individual's current need for each service included in the IPC, and to maintain documentation related to TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments. The proposed amendment requires the program provider to provide TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments, to an applicant for whom the program provider receives the completed DADS form used to authorize the services. The proposed amendment requires the program provider to provide TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments as identified on the form, within the monetary amount identified on the form, and in accordance with the individual's PDP and with Appendix C of the HCS Program waiver application. The proposed amendment requires the

program provider to complete TAS, pre-enrollment MHMs, and pre-enrollment MHMs assessments at least two days before the date of the applicant's discharge from the NF, ICF/IID, or GRO unless the delay in completion is beyond the control of the program provider. If the program provider does not complete these services at least two days before the date of the applicant's discharge, the proposed amendment requires the program provider to document information about the pending services and to provide the information to the applicant or LAR and the service coordinator at least two days before the date of the applicant's discharge from the NF, ICF/IID, or GRO. The proposed amendment requires a program provider to maintain this documentation in an individual's record. The proposed amendment requires a program provider, within one business day after completion of the TAS or pre-enrollment MHMs, to notify the service coordinator and the individual or LAR that the TAS or MHMs have been completed. The proposed amendment requires a program provider to ensure that there is an adequate supply of hot water at all times at sinks and bathing facilities for an individual receiving residential services and that the temperature of the hot water does not exceed 117 degrees Fahrenheit unless the program provider conducts a competency-based skills assessment to demonstrate that all individuals in the residence can independently regulate the temperature of the hot water from each sink and bathing facility in the residence. The proposed amendment requires the competency-based skills assessment to be conducted by a staff person who is not a service provider of residential services who works or lives in the residence; to evaluate the individual's cognitive and physical ability to independently mix or regulate the hot water temperature without assistance or guidance; to be based on a face-to-face demonstration by the individual; and to be completed at least annually. The proposed amendment requires a program provider to document the results of the assessment and keep a copy of the results in the residence. The proposed amendment requires a program provider to ensure that respite is provided to individuals when the unpaid caregiver is temporarily unavailable to provide supports. The proposed amendment requires a program provider, for an applicant 21 years of age or older who is residing in a NF and enrolling in the HCS Program, to (1) participate as a member of the SPT, which includes attending SPT meetings scheduled by the service coordinator; (2) assist in the implementation of the applicant's transition plan as described in the plan; and (3) be physically present for the pre-move site review and assist the service coordinator during the review as requested. The proposed rules require a program provider, for 180 days after an individual 21 years of age or older has enrolled in the HCS Program from a NF or has enrolled in the HCS Program as a diversion from admission to a NF, to (1) be physically present for each post-move monitoring visit and assist the service coordinator during the visit as requested; (2) assist in the implementation of the individual's transition plan as described in the plan; (3) participate as a member of the SPT, which includes attending SPT meetings scheduled by the service coordinator; and (4) notify the SPT within one calendar day after an event or condition that may put the individual at risk of admission or readmission to a NF. The proposed amendment replaces "local authority" with "LIDDA," replaces "skilled nursing facility" with "nursing facility," updates section titles and a rule cross-reference, and makes non-substantive editorial changes.

The proposed amendment to §9.177 requires, if a program provider contracts with a person or entity to provide TAS, that the person or entity must have a contract to provide TAS in accordance with Texas Administrative Code, Title 40, Chapter

49. The proposed amendment requires a program provider to ensure that a service provider of TAS is at least 18 years of age; has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; is not the applicant's relative or LAR; does not live with the applicant; and is capable of providing TAS and complying with the TAS documentation requirements. The proposed amendment requires a program provider to ensure that a service provider of behavioral support completes training required by DADS as described in the HCS Handbook. The proposed amendment deletes the prohibition that a service provider of employment assistance or supported employment be the LAR of the individual. The proposed rule states that a service provider of employment assistance or supported employment may not be the spouse of the individual or a parent of the individual if the individual is a minor.

The proposed amendment to §9.178 replaces "the Centers for Medicare and Medicaid Services" with "CMS" and makes a minor editorial change.

The proposed amendment to §9.186 replaces "termination of the program provider agreement" with "contract termination."

The proposed amendment to §9.188 updates a cross-reference.

The proposed amendment to §9.189 corrects the age range for permanency planning to be consistent with state law and update a section title in which "LIDDA" replaces "local authority."

The proposed amendment to §9.190 corrects the age range for permanency planning to be consistent with state law (under 22 years of age) and replaces "local authority" with "LIDDA" in the section title and throughout the section. The proposed amendment requires a LIDDA, in the provision of service coordination, to ensure compliance with the requirements in Chapter 41 of this title and to employ service coordinators who have received training about Chapter 41. The proposed amendment, in the requirement for a service coordinator to initiate, coordinate, and facilitate person-directed planning, states that this includes scheduling SPT meetings. The proposed amendment excludes supervised living and residential support from the requirement for an applicant's or individual's PDP to state for each HCS Program service whether the service is critical to an individual's health and safety. The proposed amendment clarifies the requirements for a service coordinator to manage the process to transfer an individual's HCS Program services from one program provider to another or transfer from one FMSA to another and states that these requirements include (1) informing the individual or LAR that the individual or LAR may choose to receive HCS Program services from any program provider that is in the geographic location preferred by the individual or LAR or to transfer to any FMSA in the geographic location preferred by the individual or LAR; and (2) providing the individual or LAR who has not selected another program provider or FMSA with a list of and contact information for HCS Program providers and FMSAs in the geographic location preferred by the individual or LAR. The proposed amendment reformats the section and requires a service coordinator to conduct a pre-move site review for an applicant 21 years of age or older who is enrolling in the HCS Program from a NF and post-move monitoring visits for an individual 21 years of age or older who enrolled in the HCS Program from a NF or has enrolled in the HCS Program as a diversion from admission to a NF. The proposed rules require a service coordinator to have at least one face-to-face contact per month with an individual, whose HCS Program services have not been suspended, to provide service coordination. The proposed amendment up-

dates rule cross-references in the section and makes a minor editorial change.

The proposed amendment to §9.191 changes the title of the section from "MRA Compliance Review" to "LIDDA Compliance Review." The proposed amendment replaces "MRA" with "LIDDA" and updates the title of 40 TAC Chapter 2, Subchapter L. The proposed amendment deletes "between DADS and the MRA" used to describe the "performance contract," which is defined in the proposed amendment to §9.153, in part, as a written agreement between DADS and a LIDDA.

The proposed amendment to §9.192 establishes that the limit for MHMs and pre-enrollment MHMs combined is \$7,500 during the time an individual is enrolled in the HCS Program and that the limit is \$300 per IPC year for repair and maintenance after the \$7,500 limit is reached. The proposed amendment establishes that for TAS, the maximum cost is \$2,500 if the applicant's proposed initial IPC does not include residential support, supervised living, or host home/companion care, or \$1,000 if the applicant's proposed initial IPC includes residential support, supervised living, or host home/companion care. The proposed amendment limits the provision of TAS to an individual to only once in the individual's lifetime.

The proposed amendment to §9.551 replaces "local authority" with "LIDDA."

The proposed amendment to §9.552 substitutes the word "LIDDAs" for "MRAs" and clarifies that the subchapter applies to applicants and individuals and their LARs.

The proposed amendment to §9.553, relating to definitions in the TxHmL Program, deletes the definition of "local authority" and "non-routine circumstances." The proposed amendment amends definitions of "CMS--Centers for Medicare and Medicaid Service," "ICF/IID," "implementation plan," "IPC--Individual plan of care," "own home or family home," "performance contract," "PDP--Person-directed plan," "service coordinator," and "service planning team." The proposed amendment adds definitions of "LIDDA-- Local intellectual and developmental disabilities authority," "military member," "military family member," "natural supports," "nursing facility," "post-move monitoring visit," "pre-move site review," "service coordination," "specialized services," and "transition plan."

The proposed amendment to §9.554 updates the title of §9.555, replaces "local authority" with "LIDDA," and makes minor editorial changes.

The proposed amendment to §9.555 changes the title of the section from "Definitions of TxHmL Program Services Service Components" to "Description of TxHmL Program Services." The proposed amendment replaces "maladaptive behaviors" with "challenging behaviors" in the description of behavioral support. The proposed amendment describes respite as relief provided for an unpaid caregiver of an individual when the caregiver is temporarily unavailable to provide supports. The proposed amendment makes minor grammatical corrections.

The proposed amendment to §9.556 reformats the section and changes the title from "Eligibility Criteria" to "Eligibility Criteria for TxHmL Program Services." The proposed amendment clarifies that an applicant or individual is eligible for TxHmL Program services if (1) the applicant or individual has an IPC with a cost for TxHmL Program services that does not exceed \$17,000; and (2) the applicant or individual is not enrolled in another waiver program or receiving a mutually excluded service identified in

the Mutually Exclusive Services table in Appendix I of the HCS Handbook available on DADS website. The proposed amendment replaces the list of financial eligibility criteria for the TxHmL Program with a reference to the financial eligibility criteria described in Appendix B of the TxHmL waiver application approved by CMS and found on DADS website. The proposed amendment makes minor editorial changes.

The proposed amendment to §9.558 changes "an initial IPC" to "an IPC" and states that an IPC must be based on the PDP and specify the type and amount of each TxHmL Program service, as well as non-TxHmL Program services and supports, to be provided to an individual during the IPC year. The proposed amendment deletes that DADS does not approve an IPC having a total cost that exceeds the combined cost limit specified in Appendix C of the TxHmL Program waiver application approved by CMS. The proposed amendment makes minor editorial changes.

The proposed amendment to §9.560 replaces "local authority" with "LIDDA."

The proposed amendment to §9.561, to reinstate authorization for payment for days when services were delivered to an individual without a current LOC, requires a LIDDA to electronically transmit to DADS an ID/RC Assessment that is signed and dated by the service coordinator; include on the ID/RC Assessment an end date of the LOC period that is not later than 365 calendar days after the end date of the previously authorized LOC period; and ensure that the electronically transmitted ID/RC Assessment contains information that is identical to the information on the signed and dated ID/RC Assessment. The proposed amendment states that DADS notifies the LIDDA of its decision to grant or deny the request for reinstatement of an LOC determination within 45 calendar days after DADS receives the ID/RC Assessment. The proposed amendment replaces "local authority" with "LIDDA."

The proposed amendment to §9.562 replaces "local authority" with "LIDDA."

The proposed amendment to §9.563 replaces "local authority" with "LIDDA."

The proposed new §9.566 requires a LIDDA to maintain an up-to-date interest list of applicants interested in receiving TxHmL Program services for whom the LIDDA is the applicant's designated LIDDA in DADS data system and states that a person may request that an applicant's name be added to the TxHmL interest list by contacting the LIDDA serving the Texas county in which the applicant or person resides. The proposed new section also states that if a request is made in accordance with the new section, a LIDDA adds an applicant's name to the TxHmL interest list (1) if the applicant resides in Texas; and (2) with an interest list request date of the date the request is received. The proposed new rule also states how DADS assigns an interest list request date for an individual added to the interest list who is determined diagnostically or functionally ineligible for another DADS waiver program. The proposed new rule describes the conditions under which an individual's name may be removed from the TxHmL interest list. The proposed new rule describes the conditions under which an individual's name may be reinstated on the TxHmL interest list after being removed, how an interest list request date is assigned, and the notification the individual or LAR receives from DADS regarding the reinstatement.

The proposed amendment to §9.567 states that DADS notifies a LIDDA in writing of the availability of TxHmL Program ser-

vices and directs the LIDDA to offer TxHmL Program services to the applicant whose interest list request date is earliest on the statewide TxHmL interest list; or the applicant whose name is not coded in the DADS data system as ineligible for the TxHmL Program and who is receiving services from the LIDDA that are funded by general revenue in an amount that would allow DADS to fund the services through the TxHmL Program. The proposed amendment requires the LIDDA to make the offer of TxHmL Program services in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery. The proposed amendment requires the LIDDA to include in the written offer (1) a statement that if the applicant or LAR does not respond to the offer of TxHmL Program services within 30 calendar days after the LIDDA's written offer, the LIDDA withdraws the offer of TxHmL Program services; and if the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant or LAR declines the offer of TxHmL Program services, the LIDDA terminates those services that are similar to services provided under the TxHmL Program; and (2) information regarding the time frame requirements described in the rule for the LIDDA to withdraw an offer of TxHmL Program services made to the applicant or LAR using the Deadline Notification form. If an applicant or LAR responds to an offer of TxHmL Program services, the proposed amendment requires the LIDDA to (1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and a written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program, waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports using the Explanation of Services and Supports document available on DADS website; and (2) give the applicant or LAR the Verification of Freedom of Choice form to document the applicant's choice regarding the TxHmL Program and ICF/IID Program. The proposed amendment requires the LIDDA to withdraw an offer of TxHmL Program services made to an applicant or LAR if (1) within 30 calendar days after the LIDDA's offer made to the applicant or LAR, the applicant or LAR does not respond to the offer of TxHmL Program services; (2) within seven calendar days after the applicant or LAR receives the Verification of Freedom of Choice form from the LIDDA, the applicant or LAR does not document the choice of TxHmL Program services over the ICF/IID Program using the Verification of Freedom of Choice form; (3) within 30 calendar days after the applicant or LAR has received the contact information regarding all available program providers in the LIDDA's local service area from the LIDDA, the applicant or LAR does not document a choice of a program provider using the Documentation of Provider Choice form; or (4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process and DADS has approved withdrawal of the offer. The proposed amendment, if the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant declines the offer of TxHmL Program services, requires the LIDDA to terminate those services that are similar to services provided under the TxHmL Program and to notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title, relating to Notification and Appeals Process. The proposed amendment requires the LIDDA to retain in the applicant's record the Verification of Freedom of Choice form documenting the applicant's or LAR's choice of services, the Documentation of Provider Choice form documenting the applicant's or LAR's choice of program provider, and any correspondence related to the offer of TxHmL Program services.

The proposed amendment replaces "local authority" with "service coordinator" in the requirement, in accordance with Chapter 41, Subchapter D of this title, to inform the applicant or LAR (1) of the applicant's right to participate in the CDS option; and (2) that the applicant or LAR may choose to have one or more services provided through the CDS option, as described in §41.108 of this title. The proposed amendment, if the applicant or LAR chooses to participate in the CDS option, requires the service coordinator to comply with the requirements in §9.583(s). The proposed amendment reformats the rule, replaces "local authority" with "LIDDA" and updates a section title and a rule cross-reference.

The proposed amendment to §9.568 replaces "local authority" with "LIDDA."

The proposed amendment to §9.570 replaces "request" with "recommendation" in the context of a LIDDA recommending that DADS terminate an individual's TxHmL Program services. The proposed amendment requires an individual's service coordinator's written recommendation for termination to contain a plan documenting that, before the recommendation was submitted, the individual or LAR was informed of (1) the consequences of termination, including the ability of the individual to receive TxHmL Program services in the future; and (2) the individual's option to transfer to another program provider if the recommendation is based on a reason other than the individual's eligibility for TxHmL Program services. The proposed amendment updates the title and a cross-reference to §9.556. The proposed amendment states that DADS suspends TxHmL Program services during an individual's temporary admission to an assisted living facility. The proposed amendment replaces "local authority" with "LIDDA" and deletes descriptive language for "ICF/IID" and "nursing facility."

The proposed amendment to §9.573 makes editorial changes in describing how DADS pays a program provider for the listed TxHmL Program services. The proposed amendment states that if requested, DADS pays a requisition fee for adaptive aids, minor home modifications, and dental treatment in accordance with the *TxHmL Program Billing Guidelines* available on DADS website. The proposed amendment deletes the requirement that a service meet the service definition in describing the circumstances under which DADS will not pay or will recoup payments from the program provider and makes a minor technical correction. The proposed amendment replaces "local authority" with "LIDDA" and makes an editorial change to replace an "and" with an "or."

The proposed amendment to §9.574 replaces "local authority" with "LIDDA" and makes a minor editorial change.

The proposed amendment to §9.577 replaces "local authorities" with "LIDDAs."

The proposed amendment to §9.578 requires a program provider (1) for an applicant 21 years of age or older who is residing in a NF and enrolling in the TxHmL Program, to participate as a member of the SPT, which includes attending SPT meetings scheduled by the service coordinator, assist in the implementation of the applicant's transition plan as described in the plan, and be physically present for the pre-move site review and assist the service coordinator during the review as requested; and (2) for 180 days after an individual 21 years of age or older has enrolled in the TxHmL Program from a NF or has enrolled in the TxHmL Program as a diversion from admission to a NF, to be physically present for each post-move

monitoring visit and assist the service coordinator during the visit as requested, assist in the implementation of the individual's transition plan as described in the plan, participate as a member of the SPT, which includes attending SPT meetings scheduled by the service coordinator, and notify the SPT within one calendar day after becoming aware of an event or condition that may put the individual at risk of admission or readmission to a NF. The proposed amendment replaces "local authority" with "LIDDA" and "skilled nursing facility" with "nursing facility" and updates a cross-reference. The proposed amendment updates the title of §9.555.

The proposed amendment to §9.579 deletes the prohibition that a service provider of employment assistance or supported employment be the LAR of the individual. The proposed amendment states that a service provider of employment assistance or supported employment may not be the spouse of the individual or a parent of the individual if the individual is a minor. The proposed amendment requires a program provider to ensure that a service provider of behavioral support completes training required by DADS as described in the HCS Handbook. The proposed amendment clarifies that when a program provider employs or contracts with a service provider of the individual's or LAR's choice, the employment or contract is to provide a TxHmL Program service.

The proposed amendment to §9.580 replaces "local authority" with "LIDDA" and makes a minor editorial change.

The proposed amendment to §9.582 changes the title and replaces "local authority" with "LIDDA" throughout the section. The proposed amendment requires a LIDDA to be in compliance with Chapter 2, Subchapter L, Service Coordination for Individuals with an Intellectual Disability, and in addition to §9.583, with other requirements for the LIDDA described in the subchapter. The proposed amendment updates the title of §9.583 and deletes descriptive information about a performance contract.

The proposed amendment to §9.583 changes the title and replaces "local authority" with "LIDDA" throughout the section. The proposed amendment deletes the requirement for a LIDDA to ensure its employees and contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services. The proposed amendment requires a LIDDA to maintain for each individual for an IPC year (1) a copy of the IPC; (2) the PDP; (3) a copy of the ID/RC Assessment; (4) documentation of the activities performed by the service coordinator in providing service coordination; and (5) any other pertinent information related to the individual. The proposed amendment requires a LIDDA to employ service coordinators who have received training about Chapter 41, Consumer Directed Services Option. The proposed amendment states that the requirement for a service coordinator to initiate, coordinate, and facilitate the person-directed planning process includes scheduling SPT meetings. The proposed amendment deletes the requirement for a LIDDA (1) to ensure that a service coordinator submits a correctly completed request for authorization of payment from non-TxHmL Program sources for which an individual may be eligible; and (2) to integrate various aspects of services delivered under the TxHmL Program and through non-TxHmL Program sources. The proposed amendment clarifies the requirements for a service coordinator to manage the process to transfer an individual's TxHmL Program services from one program provider to another or transfer from one FMSA to another and states that these requirements include (1) informing



the individual or LAR that the individual or LAR may choose to receive TxHmL Program services from any program provider that is in the geographic location preferred by the individual or LAR and whose enrollment has not reached its service capacity in the DADS data system or to transfer to any FMSA in the geographic location preferred by the individual or LAR; and (2) providing the individual or LAR who has not selected another program provider or FMSA with a list of and contact information for TxHmL Program providers and FMSAs in the geographic location preferred by the individual or LAR. The proposed amendment requires a service coordinator to conduct a pre-move site review for an applicant 21 years of age or older who is enrolling in the TxHmL Program from a NF and post-move monitoring visits for an individual 21 years of age or older who enrolled in the TxHmL Program from a NF or has enrolled in the TxHmL Program as a diversion from admission to a NF. The proposed amendment requires a service coordinator to have at least one face-to-face contact per month with an individual whose TxHmL Program services have not been suspended to provide service coordination. The proposed amendment requires a LIDDA, in the provision of service coordination in the TxHmL Program, to ensure compliance with the requirements in Chapter 9, Subchapter N and Chapter 41, in addition to the requirements in Chapter 2, Subchapter L. The proposed amendment requires a service coordinator to (1) at least annually, in accordance with Chapter 41, Subchapter D, Enrollment, Transfer, Suspension, and Termination, inform the individual or LAR of the individual's right to participate in the CDS option and that the individual or LAR may choose to have one or more services provided through the CDS option, as described in §41.108 (Services Available Through the CDS Option); and (2) document compliance with these requirements in the individual's record. The proposed amendment replaces a reference to §9.566, which is proposed for repeal, with a reference to §9.567. The proposed amendment reformats the section and updates the title of §9.555.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments related to TAS will result in additional costs in the HCS Program for reimbursing HCS program providers up to \$1,000 or up to \$2,500 for TAS. DADS anticipates that 264 individuals per year will need TAS after they are discharged from a nursing facility, ICF/IID, or GRO, and enrolling in the HCS Program. DADS estimates the additional cost in state and federal funds in each of the next five years to be \$700,874.

There will be an additional cost for targeted case management based on the requirement for a service coordinator to have one face-to-face contact per month with an individual to provide service coordination. The only exception is if the individual's services are suspended at the time. DADS estimates the additional cost in state and federal funds to be \$2,832,511 for fiscal year (FY) 2016, and \$3,042,951 for subsequent years.

There will be an additional cost to the State for reimbursing program providers for services provided during SPT meetings for 180 days after enrollment for individuals 21 years and older transitioning from nursing facilities. DADS is unable to estimate the additional cost because it is unknown how many individuals will transfer from nursing facilities. Additionally, the HCS and TxHmL Program Billing Guidelines allow program providers to bill for participation in SPT meetings only for certain staff members. There-

fore, DADS is unable to predict how often a program provider will bill for participation in the required SPT meetings.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments may have an adverse economic effect on small businesses or micro-businesses. The proposed amendments require a program provider representative to participate as a member of the SPT of an applicant who is 21 years of age or older, residing in a nursing facility, and transitioning from the facility to the community by enrolling in a waiver program. A program provider will not be reimbursed for the cost of staff participating in the SPT.

DADS did not consider any alternatives to this requirement because, regardless of the size of the program provider, participation of a representative in SPT meetings when an individual transitions from a nursing facility into a waiver program is necessary to help ensure the individual's health and safety in the community setting. The number of small businesses or micro-businesses affected by the amendments is not more than 2460 entities, because there are 1495 HCS and 965 TxHmL program providers required to comply with this rule. DADS does not know how many of these program providers are small businesses or micro-businesses.

#### PUBLIC BENEFIT AND COSTS

Kristi Jordan, Deputy Commissioner, has determined that, for each year of the first five years the amendments are in effect, the public will benefit from rules designed to ensure successful transition of individuals from nursing facilities to the community and from the availability of TAS, a new HCS Program service that will assist an applicant who is moving out of an institution to set up a household in the community. Individuals will also benefit from the availability of pre-enrollment MHMs to help ensure that, at the time an applicant moves to a community setting, the setting protects the individual's health, welfare, and safety. The public will also benefit from rules that protect an individual's health and safety by ensuring that hot water is at a temperature that will not cause injury to the individual.

Ms. Jordan anticipates that there will be an economic cost to persons who are required to comply with the amendments. The proposed amendments require a program provider representative to participate as a member of the SPT of an applicant who is 21 years of age or older, residing in a nursing facility, and transitioning from the facility to the community by enrolling in a waiver program. This activity will have a fiscal impact on a program provider because the program provider will not be reimbursed for the cost of staff participating in the SPT. However, this activity is very specific to each individual and DADS is not able to estimate the amount of time the program provider representative will spend participating in SPT meetings. In addition, the proposed rules that address water temperatures at sinks and bathing locations for individuals receiving certain services may be addressed in several ways, including by adjusting the temperature of a home's water heater or by conducting a competency-based skills assessment for an individual. These actions can be taken without adding staff or other resources and the cost will be nominal to program providers. In addition, the proposed rules require a program provider to ensure that a behavioral support service provider completes web-based training developed by DADS once every three years. The training will not require additional staff or resources and the cost of completing such train-

ing will also be nominal to a program provider. The amendments will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Amanda Woodall at (512) 438-3693 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-14R07, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 14R07" in the subject line.

#### SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM

**40 TAC §§9.151 - 9.155, 9.157 - 9.163, 9.166 - 9.168, 9.170, 9.171, 9.174, 9.177, 9.178, 9.186, 9.188 - 9.192**

#### STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments and new section affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §9.151. Purpose.

The purpose of this subchapter is to describe:

- (1) the HCS Program eligibility criteria for applicants and individuals;
- (2) the process for enrollment of applicants in the HCS Program;
- (3) requirements for reimbursement of a program provider;

(4) the responsibilities of a program provider;

(5) the process for certifying and sanctioning a program provider in the HCS Program; and

(6) the responsibilities of a LIDDA [an MRA] in providing service coordination.

#### §9.152. Application.

This subchapter applies to: [all MRAs and HCS Program providers.]

(1) LIDDAs;

(2) program providers;

(3) applicants and their LARs; and

(4) individuals and their LARs.

#### §9.153. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) **Actively involved--**Significant, ongoing, and supportive involvement with an applicant or individual by a person, as determined by the applicant's or individual's service planning team or program provider, based on the person's:

(A) interactions with the applicant or individual;

(B) availability to the applicant or individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the applicant's or individual's needs, preferences, values, and beliefs.

(2) **Applicant--**A Texas resident seeking services in the HCS Program.

(3) **Behavioral emergency--**A situation in which an individual's severely aggressive, destructive, violent, or self-injurious behavior:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the individual or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) is not addressed in a written behavior support plan; and

(D) does not occur during a medical or dental procedure.

(4) **Business day--**Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code §662.003(a) or (b).

(5) **Calendar day--**Any day, including weekends and holidays.

(6) **CDS option--**Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(7) **CMS--**Centers for Medicare and Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(8) **[(7)] Cognitive rehabilitation therapy--**A service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain

cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

(B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(9) [(8)] Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(10) [(9)] Condition of a serious nature--Except as provided in paragraph (23) of this section, a condition in which a program provider's noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.

(11) [(10)] Contract--A provisional contract or a standard contract.

(12) [(11)] CRCG--Community resource coordination group. A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the HHSC website at [www.hhsc.state.tx.us](http://www.hhsc.state.tx.us).

(13) [(12)] Critical incident--An event listed in the HCS Provider User Guide found at [www.dads.state.tx.us](http://www.dads.state.tx.us)

(14) [(13)] DADS--The Department of Aging and Disability Services.

(15) [(14)] DARS--The Department of Assistive and Rehabilitative Services.

(16) [(15)] DFPS--The Department of Family and Protective Services.

(17) [(16)] Emergency--An unexpected situation in which the absence of an immediate response could reasonably be expected to result in risk to the health and safety of an individual or another person.

(18) [(17)] Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:

(A) an individual needing emergency medical care;

(B) an individual being removed from his residence by law enforcement;

(C) an individual leaving his residence without notifying a staff member or service provider and not being located; and

(D) an individual being moved from his residence to protect the individual (for example, because of a hurricane, fire, or flood).

(19) [(18)] Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(20) [(19)] FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(21) [(20)] FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(22) [(21)] Four-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than four persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that, if it is the residence of four persons, at least one of those persons receives residential support;

(D) that is not the residence of any persons other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(E) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services).

(23) GRO--General Residential Operation. As defined in Texas Human Resources Code, §42.002, a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.

(24) [(22)] Hazard to health or safety--A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

(25) [(23)] HCS Program--The Home and Community-based Services Program operated by DADS as authorized by CMS [the Centers for Medicare and Medicaid Services] in accordance with §1915(c) of the Social Security Act.

(26) [(24)] HHSC--The Texas Health and Human Services Commission.

(27) [(25)] ICAP--Inventory for Client and Agency Planning.

(28) [(26)] ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed in accordance with THSC [Texas Health and Safety Code], Chapter 252; or

(B) certified by DADS.

(29) [(27)] ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(30) [(28)] ICF/MR--ICF/IID.

(31) [(29)] ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by DADS for LOC determination and LON assignment.

(32) [(30)] Implementation Plan--A written document developed by the program provider [for an individual] that, for each HCS Program service on the individual's IPC to be provided by the program provider [not provided through the CDS option], includes:

(A) a list of outcomes identified in the PDP that will be addressed using HCS Program services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of [HCS Program] units of HCS Program services [service] needed to complete each objective;

(E) the frequency and duration of HCS Program services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(33) [(31)] Individual--A person enrolled in the HCS Program.

(34) [(32)] Initial IPC--The first IPC for an individual developed before the individual's enrollment into the HCS Program.

(35) [(33)] Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period[; referred to in some sections as mental retardation].

(36) [(34)] IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each HCS Program service to be provided to the individual during an IPC year; and

(ii) the services and supports to be provided to the individual through non-HCS Program resources, including natural supports, medical services, and educational services; and

(B) is authorized by DADS.

(37) [(35)] IPC cost--Estimated annual cost of HCS Program services included on an IPC.

(38) [(36)] IPC year--A 12-month period of time starting on the date an initial or renewal IPC begins. A revised IPC does not change the begin or end date of an IPC year.

(39) [(37)] Large ICF/IID--A non-state operated ICF/IID with a Medicaid certified capacity of 14 or more.

(40) [(38)] LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(41) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC, §533A.035.

(42) [(39)] LOC--Level of care. A determination given to an individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

[(41)] Local authority--An entity to which the Health and Human Services Commission's authority and responsibility, as described in Texas Health and Safety Code, §531.002(11), has been delegated.]

(43) [(41)] LON--Level of need. An assignment given by DADS to an individual upon which reimbursement for host home/companion care, supervised living, residential support, and day habilitation is based.

(44) [(42)] LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(45) [(43)] Microboard--A program provider:

(A) that is a non-profit corporation:

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of HCS Program services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of HCS Program services; and

(B) that has a service capacity designated in the DADS data system of no more than three individuals.

(46) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty.

(47) Military family member--An applicant who is the spouse or child (regardless of age) of:

(A) a military member who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch; or

(B) a former military member who had declared and maintained Texas as the member's state of legal residence in the manner provided by the applicable military branch:

(i) who was killed in action; or

(ii) who died while in service.

[(45)] MRA--Local authority.]

[(46)] MR/RC Assessment--An ID/RC Assessment.]

(48) [(46)] Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

[(48)] Non-routine circumstances--An event that occurs unexpectedly or does not occur on a regular basis, such as a night off, a vacation, an illness, an injury, a hospitalization, or a funeral.]

(49) [(48)] Nursing facility--A facility licensed in accordance with THSC [Texas Health and Safety Code], Chapter 242.

(50) [(49)] PDP (person-directed plan)--A written plan, based on person-directed planning and developed with an applicant or individual in accordance with the DADS [HCS] Person-Directed Plan form and discovery tool found at [www.dads.state.tx.us](http://www.dads.state.tx.us), that describes the supports and services necessary to achieve the desired outcomes

identified by the applicant or individual (and LAR on the applicant's or individual's behalf) and ensure the applicant's or individual's health and safety.

(51) Performance contract--A written agreement between DADS and a LIDDA for the performance of delegated functions, including those described in THSC, §533A.035.

(52) [(51)] Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an applicant or individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(53) [(52)] Permanency Planning Review Screen--A screen in the DADS data system, completed by a LIDDA [local authority], that identifies community supports needed to achieve an applicant's or individual's permanency planning outcomes and provides information necessary for approval to provide supervised living or residential support to the applicant or individual.

(54) [(50)] Person-directed planning--An ongoing process that empowers the applicant or individual (and the LAR on the applicant's or individual's behalf) to direct the development of a PDP. The process:

(A) identifies supports and services necessary to achieve the applicant's or individual's outcomes;

(B) identifies existing supports, including natural supports and other supports available to the applicant or individual and negotiates needed services system supports;

(C) occurs with the support of a group of people chosen by the applicant or individual (and the LAR on the applicant's or individual's behalf); and

(D) accommodates the applicant's or individual's style of interaction and preferences.

(55) Post-move monitoring visit--As described in §17.503 of this title, (relating to Transition Planning for a Designated Resident), a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who enrolled in the HCS Program from a nursing facility or enrolled in the HCS Program as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other locations to:

(A) assess whether essential supports identified in the transition plan are in place;

(B) identify gaps in care; and

(C) address such gaps, if any, to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(56) Pre-enrollment minor home modifications--Minor home modifications, as described in the HCS Program Billing Guidelines, completed before an applicant is discharged from a nursing facility, an ICF/IID, or a GRO and before the effective date of the applicant's enrollment in the HCS Program.

(57) Pre-enrollment minor home modifications assessment--An assessment performed by a licensed professional as required by the HCS Program Billing Guidelines to determine the need for pre-enrollment minor home modifications.

(58) Pre-move site review--As described in §17.503 of this title, a review conducted by the service coordinator in the planned residence and other locations, as determined by the service planning team, for an applicant transitioning from a nursing facility to the HCS Pro-

gram. The purpose of the review is to ensure that essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

(59) [(54)] Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide HCS Program [program] services, excluding an FMSA.

(60) [(55)] Provisional contract--An initial contract that DADS enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(61) [(56)] Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(62) [(57)] Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the HCS Program Billing Guidelines.

(63) [(58)] Renewal IPC--An IPC developed for an individual in accordance with §9.166(a) of this subchapter (relating to Renewal and Revision of an IPC).

(64) [(59)] Restraint--

(A) A manual method, except for physical guidance or prompting of brief duration, or a mechanical device to restrict:

(i) the free movement or normal functioning of all or a portion of an individual's body; or

(ii) normal access by an individual to a portion of the individual's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the individual resists the physical guidance or prompting.

(65) [(60)] RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(66) [(61)] Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year in accordance with §9.166(b) or (d) of this subchapter [or §9.168(h) of this subchapter (relating to CDS Option)] to add a new HCS Program service or change the amount of an existing service.

(67) [(62)] Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(68) [(63)] Service backup plan--A plan that ensures continuity of critical program services if service delivery is interrupted.

(69) [(64)] Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(70) [(65)] Service coordinator--An employee of a LIDDA [local authority] who provides service coordination to an individual.

(71) [(66)] Service planning team--One of the following: [A planning team consisting of an applicant or individual, LAR, service coordinator, and other persons chosen by the applicant or individual or LAR on behalf of the applicant or individual (for example, a program provider representative, family member, friend, or teacher). ]

(A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team consisting of:

- (i) an applicant or individual and LAR;
- (ii) service coordinator; and
- (iii) other persons chosen by the applicant or individual or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the HCS Program, a planning team consisting of:

- (i) the applicant and LAR;
- (ii) service coordinator;
- (iii) a staff member of the program provider;
- (iv) providers of specialized services;
- (v) a nursing facility staff person who is familiar with the applicant's needs;

(vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(vii) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility, for 180 days after enrollment, a planning team consisting of:

- (i) the individual and LAR;
- (ii) service coordinator;
- (iii) a staff member of the program provider;
- (iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(v) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(72) [(67)] Service provider--A person, who may be a staff member, who directly provides an HCS Program service to an individual.

(73) Specialized services--Services defined in §17.102 of this title (relating to Definitions).

(74) [(68)] SSI--Supplemental Security Income.

(75) [(69)] Staff member--An employee or contractor of an HCS Program provider.

(76) [(70)] Standard contract--A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(77) [(71)] State Medicaid claims administrator--The entity contracting with the state as the Medicaid claims administrator and fiscal agent.

(78) [(72)] State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(79) [(73)] Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(80) [(74)] TANF--Temporary Assistance for Needy Families.

(81) TAS--Transition assistance services. Services provided to assist an applicant in setting up a household in the community before being discharged from a nursing facility, an ICF/IID, or a GRO and before enrolling in the HCS Program. TAS consists of:

(A) for an applicant whose proposed initial IPC does not include residential support, supervised living, or host home/companion care:

- (i) paying security deposits required to lease a home, including an apartment, or to establish utility services for a home;
- (ii) purchasing essential furnishings for a home, including a table, a bed, chairs, window blinds, eating utensils, and food preparation items;

(iii) paying for expenses required to move personal items, including furniture and clothing, into a home;

(iv) paying for services to ensure the health and safety of the applicant in a home, including pest eradication, allergen control, or a one-time cleaning before occupancy; and

(v) purchasing essential supplies for a home, including toilet paper, towels, and bed linens; and

(B) for an applicant whose initial proposed IPC includes residential support, supervised living, or host home/companion care:

- (i) purchasing bedroom furniture;
- (ii) purchasing personal linens for the bedroom and bathroom; and

(iii) paying for allergen control.

(82) [(75)] Three-person residence--A residence:

(A) that a program provider leases or owns;

(B) in which at least one person but no more than three persons receive:

(i) residential support;

(ii) supervised living;

(iii) a non-HCS Program service similar to residential support or supervised living (for example, services funded by DFPS or by a person's own resources); or

(iv) respite;

(C) that is not the residence of any person other than a service provider, the service provider's spouse or person with whom the service provider has a spousal relationship, or a person described in subparagraph (B) of this paragraph; and

(D) that is not a dwelling described in §9.155(a)(5)(H) of this subchapter.

(83) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(84) Transition plan--As described in §17.503 of this title, a written plan developed by the service planning team for an applicant who is residing in a nursing facility and enrolling in the HCS Program. A transition plan includes the essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

(85) [(76)] Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

*§9.154. Description of the HCS Program.*

(a) The HCS Program is a Medicaid waiver program approved by CMS [the Centers for Medicare and Medicaid Services (CMS)] pursuant to §1915(c) of the Social Security Act. It provides community-based services and supports to eligible individuals as an alternative to the ICF/IID Program. The HCS Program is operated by DADS under the authority of HHSC.

(b) Enrollment in the HCS Program is limited to the number of individuals in specified target groups and to the geographic areas approved by CMS.

(c) HCS Program services listed in this subsection are selected for inclusion in an individual's IPC to ensure the individual's health, safety, and welfare in the community, supplement rather than replace that individual's natural supports and other community services for which the individual may be eligible, and prevent the individual's admission to institutional services. The following HCS Program services are defined in Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us). Services available under the HCS Program are:

(1) TAS;

(2) [(4)] professional therapies provided by appropriately licensed or certified professionals as follows:

(A) physical therapy, including a pre-enrollment minor home modifications assessment;

(B) occupational therapy, including a pre-enrollment minor home modifications assessment;

(C) speech and language pathology;

(D) audiology;

(E) social work;

(F) behavioral support, including a pre-enrollment minor home modifications assessment;

(G) dietary services; and

(H) cognitive rehabilitation therapy;

(3) [(2)] nursing provided by an RN or LVN;

(4) [(3)] residential assistance, excluding room and board, provided in one of the following three ways:

(A) host home/companion care;

(B) supervised living; or

(C) residential support;

(5) [(4)] supported home living, which is not a reimbursable service for individuals receiving host home/companion care, supervised living, or residential support;

(6) [(5)]respite, which includes room and board when provided in a setting other than the individual's home, but is not a reimbursable service for individuals receiving host home/companion care, supervised living, or residential support;

(7) [(6)] day habilitation, provided exclusive of any other separately funded service, including public school services, rehabilitative services for persons with mental illness, other programs funded by DADS, or programs funded by DARS;

(8) [(7)] employment assistance;

(9) [(8)] supported employment;

(10) [(9)] adaptive aids;

(11) [(10)] minor home modifications, including pre-enrollment minor home modifications;

(12) [(11)] dental treatment; and

(13) [(12)] if the individual is participating in the CDS option:

(A) FMS; and

(B) support consultation.

(d) DADS has grouped Texas counties [of the state of Texas] into geographical areas, referred to as "local service areas," each of which is served by a LIDDA [local authority]. DADS has further grouped the local service areas into "waiver contract areas." A list of the counties included in each local service area and waiver contract area is found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(1) A program provider may provide HCS Program services only to persons residing in the counties specified for the program provider in DADS automated enrollment and billing system.

(2) A program provider must have a separate contract for each waiver contract area served by the program provider.

(3) A program provider may have a contract to serve one or more local service areas within a waiver contract area, but the program provider must serve all of the counties within each local service area covered by the contract [program provider agreement].

(4) A program provider may not have more than one contract per waiver contract area.

(e) A program provider must comply with:

(1) all applicable state and federal laws, rules, and regulations, including Chapter 49 of this title (relating to Contracting for Community Services); and

(2) DADS Information Letters regarding the HCS Program found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(f) The CDS option is a service delivery option, described in Chapter 41 of this title (relating to Consumer Directed Services Option), in which an individual or LAR employs and retains service providers and directs the delivery of one or more HCS Program services that may be provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option).

§9.155. *Eligibility Criteria and Suspension of HCS Program Services.*

(a) An applicant or individual is eligible for HCS Program services if he or she:

(1) meets the financial eligibility criteria as described [defined] in Appendix B of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) [subsection (b) of this section];

(2) meets one of the following criteria:

(A) based on a determination of an intellectual disability performed in accordance with THSC [Texas Health and Safety Code], Chapter 593, Subchapter A and as determined by DADS in accordance with §9.161 of this subchapter (relating to LOC Determination), qualifies for an ICF/IID LOC I as defined in §9.238 of this chapter (relating to ICF/MR Level of Care I Criteria);

(B) as determined by DADS in accordance with §9.161 of this subchapter, qualifies for an ICF/IID LOC I as defined in §9.238 of this chapter or ICF/IID LOC VIII as defined in §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria), and has been determined by DADS:

(i) to have an intellectual disability or a related condition;

(ii) to need specialized services; and

(iii) to be inappropriately placed in a Medicaid certified nursing facility based on an annual resident review conducted in accordance with the requirements of Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR)); or

(C) meets the following criteria:

(i) based on a determination of an intellectual disability performed in accordance with THSC [Texas Health and Safety Code], Chapter 593, Subchapter A and as determined by DADS in accordance with §9.161 of this subchapter, qualifies for one of the following levels of care:

(I) an ICF/IID LOC I as defined in §9.238 of this chapter; or

(II) an ICF/IID LOC VIII as defined in §9.239 of this chapter;

(ii) meets one of the following:

(I) resides in a nursing facility immediately prior to enrolling in the HCS Program; or

(II) is at imminent risk of entering a nursing facility as determined by DADS; and

(iii) is offered [an] HCS Program services [vacancy] designated for a member of the reserved [reserve] capacity group "Individuals with a level of care I or VIII residing in a nursing facility" included in Appendix B of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us);

(3) has an [authorized] IPC cost that [for which the IPC cost] does not exceed: [200% of the annual ICF/IID reimbursement rate paid to a small ICF/IID; as defined in 1 TAC §355.456 (relating to Reimbursement Methodology) for the individual's level of need as it would be assigned under §9.240 of this chapter (relating to Level of Need) or 200% of the estimated annualized per capita cost for ICF/IID services, whichever is greater;]

(A) \$167,468 for an applicant or individual with an LON 1, LON 5, or LON 8;

(B) \$168,615 for an applicant or individual with an LON 6; or

(C) \$305,877 for an applicant or individual with an LON 9;

(4) is not enrolled in another waiver program and is not receiving a mutually excluded service as identified in the Mutually Exclusive Services table in Appendix II of the HCS Handbook available at [www.dads.state.tx.us](http://www.dads.state.tx.us) [under §1915(b) or (e) of the Social Security Act]; and

(5) does not reside in:

(A) an ICF/IID;

(B) a nursing facility [licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242];

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC [Texas Health and Safety Code], Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services (DSHS);

(F) a facility operated by DARS;

(G) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

[(b) An applicant or individual is financially eligible for the HCS Program if he or she:]

[(1) is categorically eligible for SSI benefits;]



~~{(2) has once been eligible for and received SSI benefits and continues to be eligible for Medicaid as a result of protective coverage mandated by federal law;}~~

~~{(3) is under 18 years of age and:}~~

~~{(A) resides with a parent or spouse;}~~

~~{(B) is eligible for Medicaid benefits only, if institutionalized;}~~

~~{(C) meets the SSI criteria for disability;}~~

~~{(D) meets the SSI criteria for institutional deeming; and}~~

~~{(E) has income and resources that meet the requirements of the SSI program;}~~

~~{(4) is under 20 years of age and:}~~

~~{(A) is financially the responsibility of DFPS in whole or in part; and}~~

~~{(B) is being cared for in a foster home or group home:}~~

~~{(i) that is licensed or certified and supervised by DFPS or a licensed public or private nonprofit child placing agency; and}~~

~~{(ii) in which a foster parent is the primary caregiver residing in the home;}~~

~~{(5) is a member of a family who receives full Medicaid benefits as a result of qualifying for TANF; or}~~

~~{(6) is eligible for SSI benefits in the community, except on the basis of income, and meets the special institutional income limit for Medicaid benefits in Texas without regard to spousal income.}~~

~~(b) [(e)] For applicants or individuals with spouses who live in the community, the income and resource eligibility requirements are determined according to the spousal impoverishment provisions in §1924 of the Social Security Act and as specified in the Medicaid State Plan.~~

~~(c) [(d)] If an individual is temporarily admitted to one of the following settings, the individual's HCS Program services are suspended during that admission:~~

~~(1) a hospital;~~

~~(2) an ICF/IID;~~

~~(3) a nursing facility [~~icensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242~~];~~

~~(4) a residential child-care operation licensed or subject to being licensed by DFPS;~~

~~(5) a facility licensed or subject to being licensed by the DSHS;~~

~~(6) a facility operated by DARS; [~~or~~]~~

~~(7) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or [~~-~~]~~

~~(8) an assisted living facility licensed or subject to being licensed in accordance with THSC, Chapter 247.~~

#### §9.157. HCS Interest List.

(a) A LIDDA must maintain an up-to-date interest list of applicants interested in receiving HCS Program services for whom the LIDDA is the applicant's designated LIDDA in DADS data system.

(b) A person may request that an applicant's name be added to the HCS interest list by contacting the LIDDA serving the Texas county in which the applicant or person resides.

(c) If a request is made in accordance with subsection (b) of this section, a LIDDA must add an applicant's name to the HCS interest list:

(1) if the applicant resides in Texas; and

(2) with an interest list request date of the date the request is received.

(d) DADS adds an applicant's name to the HCS interest list with a request date as follows:

(1) for an applicant under 22 years of age and residing in an ICF/IID or nursing facility located in Texas, based on the date of admission to the ICF/IID or nursing facility; or

(2) for an applicant determined diagnostically or functionally ineligible for another DADS waiver program, one of the following dates, whichever is earlier:

(A) the request date of the interest list for the other waiver program; or

(B) an existing request date for the HCS Program for the applicant.

(e) DADS or the LIDDA removes an applicant's name from the HCS interest list if:

(1) the applicant or LAR requests in writing that the applicant's name be removed from the interest list, unless the applicant is under 22 years of age and residing in an ICF/IID or nursing facility;

(2) the applicant moves out of Texas, unless the applicant is a military family member living outside of Texas for less than one year after the military member's active duty ends;

(3) the applicant declines the offer of HCS Program services or, as described in §9.158(f) of this subchapter (relating to Process for Enrollment of Applicants), an offer of HCS Program services is withdrawn, unless:

(A) the applicant is a military family member living outside of Texas for less than one year after the military member's active duty ends; or

(B) the applicant is under 22 years of age and residing in an ICF/IID or nursing facility;

(4) the applicant is a military family member living outside of Texas for more than one year after the military member's active duty ends;

(5) the applicant is deceased; or

(6) DADS has denied the applicant enrollment in the HCS Program and the applicant or LAR has had an opportunity to exercise the applicant's right to appeal the decision in accordance with §9.169 of this subchapter (relating to Fair Hearing) and did not appeal the decision, or appealed and did not prevail.

(f) If DADS or the LIDDA removes an applicant's name from the HCS interest list in accordance with subsection (e)(1) - (4) of this section and, within 90 days after the name was removed, the LIDDA receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) reinstates the applicant's name to the interest list based on the original request date described in subsection (c) or (d) of this section; and

(2) notifies the applicant or LAR in writing that the applicant's name has been reinstated to the interest list in accordance with paragraph (1) of this subsection.

(g) If DADS or the LIDDA removes an applicant's name from the HCS interest list in accordance with subsection (e)(1) - (4) of this section and, more than 90 days after the name was removed, the LIDDA receives an oral or written request from a person to reinstate the applicant's name on the interest list:

(1) the LIDDA must add the applicant's name to the interest list based on the date the LIDDA receives the oral or written request; and

(2) DADS notifies the applicant or LAR in writing that the applicant's name has been added to the interest list in accordance with paragraph (1) of this subsection.

(h) If DADS or the LIDDA removes an applicant's name from the HCS interest list in accordance with subsection (e)(6) of this section and the LIDDA subsequently receives an oral or written request from a person to reinstate the applicant's name on the interest list:

(1) the LIDDA must add the applicant's name to the interest list based on the date the LIDDA receives the oral or written request; and

(2) DADS notifies the applicant or LAR in writing that the applicant's name has been added to the interest list in accordance with paragraph (1) of this subsection.

§9.158. *Process for Enrollment of Applicants.*

(a) DADS notifies a LIDDA [local authority], in writing, of the availability of [an] HCS Program services [vacancy] in the LIDDA's [local authority's] local service area and directs the LIDDA [local authority] to offer HCS Program services [the program vacancy] to an applicant:

(1) whose interest list request [registration] date, assigned in accordance with §9.157(c)(2) and (d) [§9.157(a)(4)] of this subchapter (relating to [Maintenance of] HCS [Program] Interest List), is earliest on the statewide interest list for the HCS Program as maintained by DADS; or

(2) whose registration date, assigned in accordance with §9.157(a)(4) of this subchapter is earliest on the local service area interest list for the HCS Program as maintained by the local authority; in accordance with §9.157 of this subchapter; or

(3) who is a member of a target group identified in the approved HCS waiver application.

(b) Except as provided in subsection (c) of this section, the LIDDA [local authority] must make the offer of HCS Program services [program vacancy] in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) The LIDDA [local authority] must make the offer of HCS Program services [program vacancy] to an applicant described in subsection (a)(2) [(a)(3)] of this section [who is currently receiving services in a state supported living center or a state mental health facility as defined by §2.253 of this title (relating to Definitions)] in accordance with DADS procedures.

(d) The LIDDA [local authority] must include in a written offer that is made in accordance with subsection (a)(1) [(2), or (3)] of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of HCS Program services [the program vacancy] within 30 calendar

days after the LIDDA's [local authority's] written offer, the LIDDA [local authority] withdraws the offer; and [of the program vacancy, and:]

[(i) for an applicant who is under 22 years of age and residing in an institution listed in §9.157(a)(1)(B)(i) - (v) of this subchapter, the local authority removes the applicant's name from the HCS Program interest list in accordance with §9.157(a)(3)(F) of this subchapter and places the applicant's name on the HCS Program interest list with a new registration date that is the date of the LIDDA's local authority's notification; or]

[(ii) for an applicant other than one described in clause (i) of this subparagraph, the local authority removes the applicant's name from the HCS Program interest list in accordance with §9.157(a)(3)(F) of this subchapter; and]

(B) if the applicant is currently receiving services from the LIDDA [local authority] that are funded by general revenue and the applicant or LAR declines the offer of HCS Program services [the program vacancy], the LIDDA [local authority] terminates those services that are similar to services provided under the HCS Program; and

(2) information regarding [relating to] the time frame requirements described in subsection (f) of this section using the Deadline Notification form, which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(e) If an applicant or LAR responds to an offer of HCS Program services [program vacancy], the LIDDA [local authority] must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs under §1915(c) of the Social Security Act, and other community-based services and supports. The LIDDA [local authority] must use the Explanation of Services and Supports document, which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us); and

(2) give the applicant or LAR the Verification of Freedom of Choice Form, Waiver Program which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us), to document the applicant's choice regarding the HCS Program and ICF/IID Program.

(f) The LIDDA [local authority] must withdraw an offer of HCS Program services [a program vacancy] made to an applicant or LAR [and remove the applicant's name from the HCS Program interest list] if:

(1) within 30 calendar days after the LIDDA's [local authority's] offer made to the applicant or LAR in accordance with subsection (a)(1) [(2), or (3)] of this section, the applicant or LAR does not respond to the offer of HCS Program services [the program vacancy];

(2) within seven calendar days after the applicant or LAR receives the Verification of Freedom of Choice, Waiver Program form from the LIDDA [local authority] in accordance with subsection (e)(2) of this section, the applicant or LAR does not document the choice of HCS Program services over the ICF/IID Program using the Verification of Freedom of Choice, Waiver Program form; [or]

(3) within 30 calendar days after the applicant or LAR receives [has received] the contact information for [regarding] all program providers in the LIDDA's [local authority's] local service area in accordance with subsection (j)(3) [(4)(1)] of this section, the applicant or LAR does not document the choice of a program provider using the Documentation of Provider Choice form; or [.]

(4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process and DADS has approved the withdrawal of the offer.

(g) If the LIDDA [local authority] withdraws an offer of HCS Program services [a program vacancy] made to an applicant [and removes the applicant's name from the HCS Program interest list], the LIDDA [local authority] must notify the applicant or LAR of such action [actions], in writing, by certified United States mail, [and:]

{(1) for an applicant who is under 22 years of age and residing in an institution listed in §9.157(a)(1)(B)(i) - (v) of this subchapter, include a statement that the applicant's name will be placed on the HCS Program interest list with a new registration date that is the date of the local authority's notification; or}

{(2) for an applicant other than one described in paragraph (1) of this subsection, include a statement that the applicant or the applicant's primary correspondent may request, orally or in writing, to have the applicant's name placed on the HCS Program interest list with a new registration date that is the date the applicant or LAR makes the request.}

(h) If the applicant is currently receiving services from the LIDDA [local authority] that are funded by general revenue and the applicant declines the offer of HCS Program services [the program vacancy], the LIDDA [local authority] must terminate those services that are similar to services provided under the HCS Program.

(i) If the LIDDA [local authority] terminates an applicant's services in accordance with subsection (h) of this section, the LIDDA [local authority] must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title (relating to Notification and Appeals Process).

{(j) If the local authority notifies an applicant under 22 years of age or the applicant's LAR in accordance with subsection (g)(1) of this section, the local authority must coordinate with DADS to ensure the applicant's name is placed on the HCS Program interest list with a new registration date that is the date of the local authority's notification.}

(j) [(k)] If the applicant or LAR accepts the offer of HCS Program services, [on the applicant's behalf, chooses to enroll in the HCS Program] the LIDDA [local authority] must compile and maintain information necessary to process the request for enrollment in the HCS Program.

(1) If the applicant's financial eligibility for the HCS Program must be established, the LIDDA [local authority] must initiate, monitor, and support the processes necessary to obtain a financial eligibility determination.

(2) The LIDDA [local authority] must complete an ID/RC Assessment [if an LOC determination is necessary] in accordance with §9.161 and §9.163 of this subchapter (relating to LOC Determination and LON Assignment, respectively).

(A) The LIDDA [local authority] must:

(i) perform or endorse a determination that the applicant has an intellectual disability in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions); or

(ii) verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions).

(B) The LIDDA [local authority] must administer the ICAP and recommend an LON assignment to DADS in accordance with §9.163 and §9.164 of this subchapter (relating to DADS [DADS'] Review of LON).

(C) The LIDDA [local authority] must electronically transmit the completed ID/RC Assessment to DADS for approval in accordance with §9.161(a) and §9.163(a) of this subchapter and, if applicable, submit supporting documentation as required by §9.164(c) of this subchapter.

(3) The LIDDA must provide names and contact information to the applicant or LAR for all program providers in the LIDDA's local service area.

(4) [(3)] The LIDDA [local authority] must assign a service coordinator who, together with other members of the applicant's service planning team [applicant and LAR], must develop:

(A) a PDP; and [-]

(B) [(4)The service coordinator must develop] a proposed initial IPC [with the applicant or LAR] in accordance with §9.159(c) of this subchapter (relating to IPC).

(5) A service coordinator must discuss the CDS option with the applicant or LAR in accordance with §9.168(a) and (b) of this subchapter (relating to CDS Option).

(k) [(4)] The service coordinator must:

{(1) provide names and contact information to the applicant or LAR regarding available program providers in the local authority's local service area (that is, program providers operating below their service capacity as identified in the DADS data system);}

(1) [(2)] arrange for meetings and visits with potential program providers as requested by the applicant or LAR;

(2) [(3)] review the proposed initial IPC with potential program providers as requested by the applicant or LAR;

(3) [(4)] ensure that the applicant's or LAR's choice of a program provider is documented on the Documentation of Provider Choice Form and signed by the applicant or LAR;

(4) [(5)] negotiate and finalize the proposed initial IPC and the date services will begin with the selected program provider, consulting with DADS if necessary to reach agreement with the selected program provider on the content of the proposed initial IPC and the date services will begin;

(5) determine whether the applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO;

(B) has not previously received TAS; and

(C) anticipates needing TAS;

(6) if the service coordinator determines that the applicant meets the criteria described in paragraph (5) of this subsection:

(A) complete, with the applicant or LAR and the selected program provider, a Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form found at [www.dads.state.tx.us](http://www.dads.state.tx.us) in accordance with the form's instructions, which includes:

(i) identifying the TAS the applicant needs; and

(ii) estimating the monetary amount for each TAS identified, which must be within the service limit described in §9.192(a)(5) of this subchapter (relating to Service Limits);

(B) submit the completed form to DADS for authorization;

(C) send the form authorized by DADS to the selected program provider; and

(D) include the TAS and the monetary amount authorized by DADS on the applicant's proposed initial IPC;

(7) determine whether an applicant meets the following criteria:

(A) is being discharged from a nursing facility, an ICF/IID, or a GRO;

(B) has not met the maximum service limit for minor home modifications as described in §9.192(a)(3)(A) of this subchapter; and

(C) anticipates needing pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment;

(8) if the service coordinator determines that an applicant meets the criteria described in paragraph (7) of this subsection:

(A) complete, with the applicant or LAR and selected program provider, a Pre-enrollment Minor Home Modifications/Assessments Authorization form found at [www.dads.state.tx.us](http://www.dads.state.tx.us) in accordance with the form's instructions, which includes:

(i) identifying the pre-enrollment minor home modifications the applicant needs;

(ii) identifying the pre-enrollment minor home modifications assessments conducted by the program provider as required by §9.174(h)(1)(A) of this subchapter (relating to Certification Principles: Service Delivery);

(iii) based on documentation provided by the program provider as required by the *HCS Program Billing Guidelines*, stating the cost of:

(I) the pre-enrollment minor home modifications identified on the form, which must be within the service limit described in §9.192(a)(3)(A) of this subchapter; and

(II) the pre-enrollment minor home modifications assessments conducted;

(B) submit the completed form to DADS for authorization;

(C) send the form authorized by DADS to the selected program provider; and

(D) include the pre-enrollment minor home modifications, pre-enrollment minor home modifications assessments, and the monetary amount for these services authorized by DADS on the applicant's proposed initial IPC;

(9) [(6)] if an applicant or LAR chooses a program provider to deliver supported home living, nursing, host home/companion care, residential support, supervised living, respite, employment assistance, supported employment, or day habilitation, [a service,] ensure that the initial proposed IPC includes a sufficient number of RN nursing units for a program provider nurse to perform an initial nursing assessment unless, as described in §9.174(c) of this subchapter [(relating to Certification Principles: Service Delivery)]:

(A) nursing services are not on the proposed IPC and the individual or LAR and selected program provider have determined that an unlicensed service provider will not perform a nursing task as documented on DADS form "Nursing Task Screening Tool"; or

(B) an unlicensed service provider will perform a nursing task and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(10) [(7)] if an applicant or LAR refuses to include on the initial proposed IPC a sufficient number of RN nursing units to perform an initial nursing assessment as required by paragraph (9) [(6)] of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, or day habilitation from the program provider, will result in the individual not receiving that service unless, as described in §9.174(d)(2) of this subchapter:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the proposed IPC for an initial assessment by the program provider's RN in the applicant's record;

(11) [(8)] ensure that the applicant or LAR signs and dates the proposed initial IPC;

(12) [(9)] ensure that the selected program provider signs and dates the proposed IPC, demonstrating agreement that the services will be provided to the applicant;

(13) [(10)] sign and date the proposed initial IPC, which indicates that the service coordinator agrees that the requirements described in §9.159(c) of this subchapter have been met; and

(14) [(11)] inform the applicant or LAR, orally and in writing, of the [following] reasons an individual's HCS Program services may be terminated:

(A) the individual no longer meets the eligibility criteria described in §9.155(a) [§9.155] of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services); or

(B) the individual or LAR requests termination of HCS Program services.

(l) [(m)] A LIDDA [The local authority] must [;]

[(4)] conduct permanency planning in accordance with §9.167(a) of this subchapter (relating to Permanency Planning). [; and]

[(2) discuss the CDS option with the applicant or LAR in accordance with §9.168(a) and (b) of this subchapter (relating to CDS Option).]

(m) [(n)] After the proposed initial IPC is finalized and signed in accordance with subsection (k) [(h)] of this section, the LIDDA [local authority] must:

(1) electronically transmit the proposed initial IPC to DADS and:

(A) keep the original proposed initial IPC in the individual's record; and

(B) ensure the electronically transmitted proposed initial IPC contains information identical to that on the original proposed initial IPC; and

(2) submit other required enrollment information to DADS.

(n) [(o)] DADS notifies the applicant or LAR, the selected program provider, the FMSA, if applicable, and the LIDDA [local authority] of its approval or denial of the applicant's enrollment. When the enrollment is approved, DADS authorizes the applicant's enrollment in the HCS Program through the DADS data system and issues an enrollment letter to the applicant that includes the effective date of the applicant's enrollment in the HCS Program.

(o) [(p)] Prior to the applicant's service begin date, the LIDDA [local authority] must provide to the selected program provider and FMSA, if applicable, copies of all enrollment documentation and associated supporting documentation, including relevant assessment results and recommendations, the completed ID/RC Assessment, the proposed initial IPC, and the applicant's PDP.

(p) [(q)] Except for the provision of TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment, as required by §9.174(g) and (h) of this subchapter, the [The] selected program provider must not initiate services until notified of DADS approval of the applicant's enrollment.

(q) [(r)] The selected program provider must develop an implementation plan for HCS Program services that is based on the individual's PDP and authorized IPC.

(r) [(s)] The LIDDA [local authority] must retain in the applicant's record:

(1) the Verification of Freedom of Choice, Waiver Program form documenting the applicant's or LAR's choice of services;

(2) the Documentation of Provider Choice form documenting the applicant's or LAR's choice of a program provider, if applicable;

(3) the Deadline Notification form; and

(4) any other correspondence related to the offer of HCS Program services [a program vacancy].

(s) [(t)] Copies of the following forms [and letters] referenced in this section are available at [www.dads.state.tx.us](http://www.dads.state.tx.us) [by contacting the Department of Aging and Disability Services, Provider Services Division, P.O. Box 149030, Mail Code W-521, Austin, Texas 78714-9030]:

(1) Verification of Freedom of Choice, Waiver Program form;

(2) Documentation of Provider Choice form; [and]

(3) Deadline Notification form; [-]

(4) Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form; and

(5) Pre-enrollment Minor Home Modifications/Assessments Authorization form.

§9.159. IPC.

(a) A service coordinator [local authority] must initiate development of a proposed initial IPC for an applicant as required by §9.158(j)(4)(B) [§9-158(k)(4)] of this subchapter (relating to Process for Enrollment of Applicants).

(b) A program provider must initiate development of a proposed renewal and proposed revised IPC for an individual as required by §9.166 of this subchapter (relating to Renewal and Revision of an IPC).

(c) An IPC must be based on the PDP and specify the type and amount of each HCS Program service to be provided to an individual, as well as services and supports to be provided by other sources during the IPC year. The type and amount of each [Each] HCS Program service in the IPC:

(1) must be necessary to protect the individual's health and welfare in the community;

(2) must not be available to the individual through any other source, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

(3) must be the most appropriate type and amount to meet the individual's needs;

(4) must be cost effective;

(5) must be necessary to enable community integration and maximize independence;

(6) if an adaptive aid or minor home modification, must:

(A) be included on DADS approved list in the *HCS Program Billing Guidelines*; and

(B) be within the service limit described in §9.192 of this subchapter (relating to Service Limits);

(7) if an adaptive aid costing \$500 or more, must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines*;

(8) if a minor home modification costing \$1,000 or more, must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines*; [and]

(9) if dental treatment [services], must be within the service limit described in §9.192 of this subchapter; [-]

(10) if respite, must be within the service limit described in §9.192 of this subchapter;

(11) if TAS, must be:

(A) supported by a Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS; and

(B) within the service limit described in §9.192(a)(5)(A) or (B) of this subchapter;

(12) if pre-enrollment minor home modifications, must be:

(A) supported by a written assessment from a licensed professional if required by the *HCS Program Billing Guidelines*;

(B) supported by a Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS; and

(C) within the service limit described in §9.192(a)(3)(A) of this subchapter; and

(13) if a pre-enrollment minor home modifications assessment, must be supported by a Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS.

~~[(d) With the exception of an HCS program service provided through the CDS option, a program provider must:]~~

~~[(1) provide an HCS Program service in accordance with an individual's authorized IPC; and]~~

~~[(2) retain in an individual's record, results and recommendations of individualized assessments that support the individual's current need for each service included in the IPC.]~~

§9.160. DADS [~~DADS~~] Review of a Proposed IPC.

(a) DADS reviews a proposed IPC to determine whether to authorize the IPC.

(b) The service coordinator's agreement or disagreement, as required by §9.166(e)(3) of this subchapter (relating to Renewal and Revision of an IPC), with the proposed renewal or revised IPC will be considered in DADS [~~DADS~~] review of the proposed IPC.

(c) DADS may review supporting documentation specified in §9.159(c) of this subchapter (relating to IPC) at any time to determine if the type and amount of HCS Program services specified in a proposed IPC are appropriate. If requested by DADS:

(1) the LIDDA [~~MRA~~] must submit to DADS documentation supporting a proposed initial IPC; and

(2) the program provider must submit to DADS documentation supporting a proposed renewal or revised IPC.

(d) Before authorizing a proposed IPC that exceeds 100 percent [%] of the estimated annualized average per capita cost for ICF/IID Program [~~ICF/MR~~] services, DADS reviews the IPC to determine if the type and amount of HCS Program services specified in the proposed IPC are appropriate and supported by documentation specified in §9.159(c) of this subchapter. A proposed IPC with such an IPC cost must be submitted to DADS with documentation supporting the IPC, as described in §9.159(c) of this subchapter, before the electronic transmission of the IPC. After reviewing the supporting documentation, DADS may request additional documentation. DADS reviews any additional documentation submitted in accordance with its request and, for an applicant or individual who is eligible for the HCS Program, electronically authorizes the proposed IPC or sends written notification that the proposed IPC has been authorized with modifications.

§9.161. LOC Determination.

(a) A LIDDA [~~local authority~~] must request an LOC from DADS for an applicant at the time the applicant is enrolled into the HCS Program. The LOC is requested by electronically transmitting a completed ID/RC Assessment to DADS, indicating the recommended LOC, signed and dated by the service coordinator. The electronically transmitted ID/RC Assessment must contain information identical to the information on the signed and dated ID/RC Assessment.

(b) A program provider must request an LOC for an individual from DADS in accordance with this subsection.

(1) Before the expiration of an ID/RC Assessment, the program provider must electronically transmit to DADS a completed ID/RC Assessment, indicating the recommended LOC, that is signed and dated by the program provider.

(2) The program provider must ensure the electronically transmitted ID/RC Assessment contains information that is identical to the information on the signed and dated ID/RC Assessment.

(3) The program provider must, within three calendar days after transmission, provide the service coordinator with a paper copy of the signed and dated ID/RC Assessment.

(c) For an LOC requested in accordance with subsection (b) of this section, within seven calendar days after the ID/RC Assessment is electronically transmitted by the program provider, the service coordinator must review the ID/RC Assessment in the DADS data system and:

(1) enter the service coordinator's name and date in the DADS data system;

(2) enter in the DADS data system whether the service coordinator agrees or disagrees with the ID/RC Assessment; and

(3) if the service coordinator disagrees with the ID/RC Assessment, notify the individual, LAR, DADS, and the program provider of the service coordinator's disagreement in accordance with DADS instructions.

(d) The service coordinator's agreement or disagreement will be considered in DADS review of an ID/RC Assessment transmitted in accordance with subsection (b) of this section.

(e) For an LOC requested under subsection (a) or (b) of this section, DADS makes an LOC determination in accordance with §9.238 of this chapter (relating to ICF/MR Level of Care I Criteria) and §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria) based on DADS [~~DADS~~] review of information reported on the applicant's or individual's ID/RC Assessment.

(f) Information on the ID/RC Assessment must be supported by current data obtained from standardized evaluations and formal assessments that measure physical, emotional, social, and cognitive factors. The signed and dated ID/RC Assessment and documentation supporting the recommended LOC must be maintained in the individual's record.

(g) DADS approves the LOC or sends written notification:

(1) to the applicant or LAR that the applicant is not eligible for HCS Program services and provides the applicant or LAR with an opportunity to request a fair hearing in accordance with §9.169 of this subchapter (relating to Fair Hearing); and

(2) to the LIDDA [~~local authority~~] and program provider that the LOC has been denied.

(h) An LOC determination is valid for 364 calendar days after the LOC effective date determined by DADS.

(i) If the LON of an individual receiving HCS Program services changes from a LON 5, LON 8, LON 6, or LON 9 to a LON 1, DADS notifies the LIDDA [~~local authority~~] of the change using DADS Form 1597, HCS Level of Care Redetermination Cover Sheet.

(1) The LIDDA [~~local authority~~] must, within 30 business days after receiving the notification:

(A) assess the individual in-person and complete a new Determination of Intellectual Disability (DID) in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions);

(B) complete the LIDDA [~~local authority~~] section of DADS Form 1597, HCS Level of Care Redetermination Cover Sheet, and return the form to DADS; and

(C) submit a copy of the results of the new DID and any other pertinent information regarding the reassessment of the individual to DADS.

(2) If the LIDDA [local authority] is unable to complete the requirements described in paragraph (1) of this subsection within the 30 business day timeframe, the LIDDA [local authority] must notify DADS of the reasons for the delay.

(3) DADS reviews the information submitted by the LIDDA [local authority] regarding the redetermination and notifies the LIDDA [local authority] and the HCS Program provider of the review decision using DADS Form 1597, HCS Level of Care Redetermination Cover Sheet.

*§9.162. Lapsed LOC.*

(a) DADS does not pay the program provider for HCS Program services provided during a period of time in which the individual's LOC has lapsed unless a reinstatement of the LOC determination is requested and granted in accordance with this section. DADS does not grant a request for reinstatement of an LOC determination to:

- (1) establish program eligibility;
- (2) renew an LOC determination;
- (3) obtain an LOC determination for a period of time for which an LOC has been denied;
- (4) revise an LON; or
- (5) obtain an LON determination for a period of time for which an individual's IPC is not current.

~~[(b) The program provider must request reinstatement of an LOC determination within 180 calendar days after the end of any month during which services were provided to the individual while the individual's LOC was lapsed.]~~

~~(b) [(e)] The program provider must request reinstatement of an LOC determination in accordance with this subsection.~~

~~(1) The program provider must:~~

~~(A) complete an ID/RC Assessment signed and dated by the program provider;~~

~~(B) include on the ID/RC Assessment an end date of the LOC period that is not later than 365 calendar days after the end date of the previously authorized LOC period; and~~

~~(C) within 180 calendar days after the end date of the previously authorized LOC period, electronically transmit to DADS the [a] completed ID/RC [MR/RC] Assessment [that is signed and dated by the program provider that includes:]~~

~~[(A) a code "E" in the "Purpose" section; and]~~

~~[(B) the beginning and ending dates of the period of time for which the individual's LOC lapsed].~~

(2) The program provider must ensure that the electronically transmitted ID/RC [MR/RC] Assessment contains information that is identical to the information on the signed and dated ID/RC [MR/RC] Assessment.

(3) The program provider must, within three calendar days after submission, provide the service coordinator with a paper copy of the signed and dated ID/RC [MR/RC] Assessment.

(c) [(d)] Within seven calendar days after the ID/RC [MR/RC] Assessment is electronically transmitted by the program provider, the service coordinator must review the ID/RC [MR/RC] Assessment in the DADS data system [CARE] and:

(1) enter the service coordinator's name and date in the DADS data system [CARE];

(2) enter in the DADS data system [CARE] whether the service coordinator agrees or disagrees with the ID/RC [MR/RC] Assessment; and

(3) if the service coordinator disagrees with the ID/RC [MR/RC] Assessment, notify the individual, LAR, DADS, and the program provider of the service coordinator's disagreement in accordance with DADS instructions.

(d) [(e)] The service coordinator's agreement or disagreement is considered in DADS [DADS'] review of an ID/RC [MR/RC] Assessment transmitted in accordance with subsection (b) [(e)] of this section.

(e) [(f)] DADS notifies the program provider of its decision to grant or deny the request for reinstatement of an LOC determination within 45 calendar days after DADS receives [DADS' receipt of] the ID/RC Assessment from the program provider in accordance with subsection (b)(1) of this section [provider's request].

(f) If DADS grants a reinstatement, the period of reinstatement will be for a period of not more than 180 calendar days after the end date of the previously authorized LOC period.

*§9.163. LON Assignment.*

(a) A LIDDA [An MRA] must request an LON for an applicant from DADS at the time an applicant is enrolled into the HCS program. The LON is requested by electronically transmitting to DADS a completed ID/RC Assessment [MR/RC], indicating the recommended LON, is signed and dated by the service coordinator. The electronically transmitted ID/RC [MR/RC] Assessment must contain information identical to the information on the signed and dated ID/RC Assessment [MR/RC].

(b) A program provider must request an LON for an individual from DADS in accordance with this subsection.

(1) Before the expiration of an ID/RC [MR/RC] Assessment, the program provider must electronically transmit to DADS a completed ID/RC [MR/RC] Assessment, indicating the recommended LON, that is signed and dated by the program provider.

(2) The program provider must ensure the electronically transmitted ID/RC [MR/RC] Assessment contains information that is identical to the information on the signed and dated ID/RC [MR/RC] Assessment.

(3) The program provider must, within three calendar days after submission, provide the service coordinator with a paper copy of the signed and dated ID/RC [MR/RC] Assessment.

(4) If applicable, the program provider must submit supporting documentation to DADS as required by §9.164(c) of this subchapter (relating to DADS [DADS'] Review of LON).

(c) For an LON requested in accordance with subsection (b) of this section, within seven calendar days after the ID/RC [MR/RC] Assessment is electronically transmitted by the program provider, the service coordinator must review the ID/RC [MR/RC] Assessment in DADS data system [CARE] and:

(1) enter the service coordinator's name and date in DADS data system [CARE];

(2) enter in DADS data system [CARE] whether the service coordinator agrees or disagrees with the ID/RC [MR/RC] Assessment; and

(3) if the service coordinator disagrees with the ID/RC [MR/RC] Assessment, notify the individual, LAR, DADS, and the

program provider of the service coordinator's disagreement in accordance with DADS instructions.

(d) The service coordinator's agreement or disagreement is considered in DADS [~~DADS~~] review of an ID/RC [~~MR/RC~~] Assessment transmitted in accordance with subsection (b) of this section.

(e) The program provider must maintain documentation supporting the recommended LON in the individual's record.

(f) DADS assigns an LON to an individual based on the individual's ICAP service level score, information reported on the individual's ID/RC [~~MR/RC~~] Assessment, and required supporting documentation. Documentation supporting a recommended LON must be submitted to DADS in accordance with DADS [~~DADS~~] guidelines.

(g) DADS assigns one of five LONs as follows:

(1) an intermittent LON (LON 1) is assigned if the individual's ICAP service level score equals 7, 8, or 9;

(2) a limited LON (LON 5) is assigned if the individual's ICAP service level score equals 4, 5, or 6;

(3) an extensive LON (LON 8) is assigned if the individual's ICAP service level score equals 2 or 3;

(4) a pervasive LON (LON 6) is assigned if the individual's ICAP service level score equals 1; and

(5) regardless of an individual's ICAP service level score, a pervasive plus LON (LON 9) is assigned if the individual meets the criteria set forth in subsection (i) of this section.

(h) An LON 1, 5, or 8, determined in accordance with subsection (g) of this section, is increased to the next LON by DADS, due to an individual's dangerous behavior, if supporting documentation submitted to DADS proves that:

(1) the individual exhibits dangerous behavior that could cause serious physical injury to the individual or others;

(2) a written behavior support plan has been implemented that meets DADS guidelines and is based on ongoing written data, targets the dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the behavior occurs;

(3) more service providers are needed and available than would be needed if the individual did not exhibit dangerous behavior;

(4) service providers are constantly prepared to physically prevent the dangerous behavior or intervene when the behavior occurs; and

(5) the individual's ID/RC [~~MR/RC~~] Assessment is correctly scored with a "1" in the "Behavior" section.

(i) DADS assigns an LON 9 if supporting documentation submitted to DADS proves that:

(1) the individual exhibits extremely dangerous behavior that could be life threatening to the individual or to others;

(2) a written behavior support plan has been implemented that meets DADS guidelines and is based on ongoing written data, targets the extremely dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the behavior occurs;

(3) management of the individual's behavior requires a service provider to exclusively and constantly supervise the individual during the individual's waking hours, which must be at least 16 hours per day;

(4) the service provider assigned to supervise the individual has no other duties during such assignment; and

(5) the individual's ID/RC [~~MR/RC~~] Assessment is correctly scored with a "2" in the "Behavior" section.

(j) A [~~The~~] program provider must re-administer the ICAP to an individual under a circumstance described in paragraphs (1) - (3) of this subsection and must submit a completed ID/RC [~~MR/RC~~] Assessment to DADS recommending a revision of the individual's LON assignment if the ICAP results and the ID/RC [~~MR/RC~~] Assessment indicate a revision of the individual's LON assignment may be appropriate. The ICAP must be re-administered:

(1) within three years after the individual's enrollment and every third year thereafter;

(2) if changes in the individual's functional skills or behavior occur that are not expected to be of short duration or cyclical in nature; or

(3) if the individual's skills and behavior are inconsistent with the individual's assigned LON.

*§9.166. Renewal and Revision of an IPC.*

(a) Renewal of the IPC. At least annually and before the expiration of an individual's IPC, the individual's IPC must be renewed in accordance with this subsection and with DADS instructions.

(1) At least 60 but no more than 90 calendar days before the expiration of an individual's IPC, the service coordinator must:

(A) notify the service planning team that the individual's PDP must be reviewed and updated; and [-]

(B) convene the service planning team to review and update the individual's PDP.

(2) The service coordinator must send a copy of the updated PDP to the program provider within 10 calendar days after the PDP is updated.

~~[(2) Upon notification in accordance with paragraph (1) of this subsection, the service planning team must review and update the individual's PDP. The service coordinator must send a copy of the updated PDP to the program provider within 10 calendar days after the PDP is updated.]~~

(3) The program provider must ensure that a meeting between the service planning team and the program provider occurs at least 30 but no more than 60 calendar days before the expiration of the individual's IPC to review the PDP and develop the proposed renewal IPC in accordance with §9.159(c) of this subchapter (relating to IPC), including completion of the CDS option portion of the proposed renewal IPC, if applicable, and the non-HCS Program services.

(4) The program provider must, before the effective date of the proposed renewal IPC, develop an implementation plan for HCS Program services that is based on the individual's PDP and proposed renewal IPC.

(5) Within seven calendar days after development of the proposed renewal IPC as required by paragraph (3) of this subsection, the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(6) Within seven calendar days after the program provider electronically transmits the proposed renewal IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.



(7) The program provider must provide HCS Program services in accordance with an implementation plan that is based on the individual's PDP and authorized renewal IPC.

(b) Revisions to the IPC. The service coordinator or the program provider may determine whether an individual's IPC needs to be revised to add a new HCS Program service or change the amount of an existing service.

(1) The service coordinator must notify the program provider if the service coordinator determines that the IPC needs to be revised.

(2) The program provider must notify the service coordinator if the program provider determines that the IPC needs to be revised.

(3) Within 14 calendar days after the notification required by paragraph (1) or (2) of this subsection:

(A) the service planning team and the program provider must develop a proposed revised IPC;

(B) the service planning team must revise the PDP, if appropriate, and if the PDP is not revised, the service coordinator must document the reasons for the proposed IPC revision;

(C) the program provider must revise the implementation plan for HCS Program services that is based on the individual's PDP and proposed revised IPC; and

(D) the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(4) Within seven calendar days after the program provider electronically transmits the proposed revised IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(5) The program provider must provide HCS Program services in accordance with an implementation plan that is based on the individual's PDP and the authorized revised IPC.

(c) Revision of IPC before delivery of services. Except as provided by subsection (d) of this section, if an individual's service planning team and program provider determine that the IPC must be revised to add a new HCS Program service or change the amount of an existing service, the program provider must revise the IPC in accordance with subsection (b) of this section before the delivery of a new or increased service.

(d) Emergency provision of services and revision of the IPC.

(1) If an emergency necessitates the provision of an HCS Program service to ensure the individual's health and safety and the service is not on the IPC or exceeds the amount on the IPC, the program provider may provide the service before revising the IPC. The program provider must, within one business day after providing the service:

(A) document:

(i) the circumstances that necessitated providing the new HCS Program service or the increase in the amount of the existing HCS Program service; and

(ii) the type and amount of the service provided;

(B) notify the service coordinator of the emergency provision of the service and that the IPC must be revised; and

(C) upon request, provide a copy of the documentation required by subparagraph (A) of this paragraph to the service coordinator.

(2) Within seven calendar days after providing the service:

(A) the service planning team and the program provider must develop a proposed revised IPC;

(B) the service planning team must revise the PDP, if appropriate;

(C) the program provider must revise the implementation plan for HCS Program services that is based on the individual's PDP and proposed revised IPC; and

(D) the program provider must comply with the requirements in subsection (e)(1) and (2) of this section.

(3) Within seven calendar days after the program provider electronically transmits the proposed revised IPC to DADS as required by subsection (e)(2) of this section, the service coordinator must comply with the requirements in subsection (e)(3) of this section.

(4) The program provider must provide HCS Program services in accordance with an implementation plan that is based on the individual's PDP and the authorized revised IPC.

(e) Submitting a proposed renewal and revised IPC to DADS. A proposed renewal or revised IPC must be submitted to DADS for authorization in accordance with this subsection.

(1) The program provider must:

(A) sign and date the proposed renewal or revised IPC demonstrating agreement that the services will be provided to the individual; and

(B) ensure that a proposed renewal or revised IPC is signed and dated by the individual or LAR.

(2) The program provider must:

(A) electronically transmit a proposed renewal or revised IPC to DADS;

(B) keep the original proposed renewal or revised IPC in the individual's record and, within three calendar days after electronic transmission, ensure the service coordinator receives a copy of the signed proposed renewal or revised IPC; and

(C) ensure the electronically transmitted proposed renewal or revised IPC contains information identical to that on the original proposed renewal or revised IPC.

(3) The service coordinator must review the electronically transmitted proposed renewal or revised IPC and:

(A) enter the service coordinator's name and date in the DADS data system;

(B) enter in the DADS data system whether the service coordinator agrees or disagrees that the requirements described in §9.159(c) of this subchapter have been met; and

(C) if the service coordinator disagrees that the requirements described in §9.159(c) of this subchapter have been met, notify the individual or LAR, the program provider, and DADS of the service coordinator's disagreement in accordance with DADS instructions.

(f) Renewal and revision of IPC when all services are through the CDS option. For an individual who is receiving all HCS Program services through the CDS option and, therefore, does not have a program provider, the service coordinator must perform the functions of the program provider described in this section.

§9.167 *Permanency Planning.*

(a) Permanency planning at enrollment. The provisions contained in this subsection apply to an applicant under 22 years of age

moving from a family setting and requesting supervised living or residential support.

(1) Information. A LIDDA [The MRA] must, before enrollment, inform the applicant and LAR:

(A) of the benefits of living in a family or community setting;

(B) that the placement of the applicant is considered temporary; and

(C) that an ongoing permanency planning process is required.

(2) Permanency planning activities.

(A) A LIDDA [The MRA] must convene a permanency planning meeting with the LAR and, if possible, the applicant, before enrollment.

(B) Before the permanency planning meeting, the LIDDA [MRA] must review the applicant's records, and, if possible, meet the applicant.

(C) During the permanency planning meeting, the meeting participants must discuss and choose one of the following goals:

(i) for an applicant under 18 years of age:

(I) to live in the applicant's family home where the natural supports and strengths of the applicant's family are supplemented, as needed, by activities and supports provided or facilitated by the LIDDA [MRA] or program provider; or

(II) to live in a family-based alternative in which a family other than the applicant's family:

(-a-) has received specialized training in the provision of support and in-home care for an individual under 18 years of age with an intellectual disability [mental retardation] or a related condition;

(-b-) will provide a consistent and nurturing environment in a family home that supports a continued relationship with the applicant's family to the extent possible; and

(-c-) will provide an enduring, positive relationship with a specific adult who will be an advocate for the applicant; or

(ii) for an applicant 18-21 [18-22] years of age to live in a setting chosen by the applicant or LAR in which the applicant's natural supports and strengths are supplemented by activities and supports provided or facilitated by the LIDDA [MRA] or program provider, and to achieve a consistent and nurturing environment in the least restrictive setting, as defined by the applicant and LAR.

(D) To accomplish the goal chosen in accordance with subparagraph (C) of this paragraph, the meeting participants must discuss and identify:

(i) the problems or issues that led the applicant or LAR to request supervised living or residential support;

(ii) the applicant's daily support needs;

(iii) for the applicant under 18 years of age:

(I) barriers to having the applicant reside in the family home;

(II) supports that would be necessary for the applicant to remain in the family home; and

(III) actions that must be taken to overcome the barriers and provide the necessary supports;

(iv) for an applicant 18-21 [18-22] years of age, the barriers to moving to a consistent and nurturing environment as defined by the applicant and LAR;

(v) the importance for the applicant to live in a long-term nurturing relationship with a family;

(vi) alternatives to the applicant living in an institutional setting;

(vii) the applicant's and LAR's need for information and preferences regarding those alternatives;

(viii) how, after the applicant's enrollment, to facilitate regular contact between the applicant and the applicant's family, and, if desired by the applicant and family, between the applicant and advocates and friends in the community to continue supportive and nurturing relationships;

(ix) natural supports and family strengths that will assist in accomplishing the identified permanency planning goal;

(x) activities and supports that can be provided by the family, LIDDA [MRA], or program provider to achieve the permanency planning goal;

(xi) assistance needed by the applicant's family:

(I) in maintaining a nurturing relationship with the applicant; and

(II) preparing the family for the applicant's eventual return to the family home or move to a family-based alternative; and

(xii) action steps, both immediate and long term, for achieving the permanency plan goal.

(E) A LIDDA [The MRA] must make reasonable accommodations to promote the participation of the LAR in a permanency planning meeting, including:

(i) conducting a meeting in person or by telephone, as mutually agreed upon by the LIDDA [MRA] and LAR;

(ii) conducting a meeting at a time and, if the meeting is in person, at a location that is mutually agreed upon by the LIDDA [MRA] and LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate.

(F) A LIDDA [The MRA] must develop a permanency plan using, as appropriate:

(i) the Permanency Planning Instrument for Children Under 18 Years of Age, found at [www.dads.state.tx.us](http://www.dads.state.tx.us); or

(ii) the Permanency Planning Instrument for Individuals 18 - 21 Years of Age, found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(G) A LIDDA [The MRA] must:

(i) complete the Permanency Planning Review Screen in DADS data system [CARE] before enrollment;

(ii) keep a copy of the Permanency Planning Review Approval Status View Screen from DADS data system [CARE] in the applicant's record; and

(iii) provide a copy of the permanency plan to the program provider, the applicant, and the LAR.

(3) Volunteer advocate.

(A) A LIDDA [The MRA] must inform the applicant and LAR that they may request a volunteer advocate to assist in permanency planning. The applicant or LAR may:

(i) select a person who is not employed by or under contract with the LIDDA [MRA] or a program provider; or

(ii) request the LIDDA [MRA] to designate a volunteer advocate.

(B) If an applicant or LAR requests that the LIDDA [MRA] designate a volunteer advocate or the LIDDA [MRA] cannot locate the applicant's LAR, the LIDDA [MRA] must attempt to designate a volunteer advocate to assist in permanency planning who is, in order of preference:

(i) an adult relative who is actively involved with the applicant;

(ii) a person who:

(I) is part of the applicant's natural supports; and

(II) is not employed by or under contract with the LIDDA [MRA] or a program provider; or

(iii) a person or a child advocacy organization representative who:

(I) is knowledgeable about community services and supports;

(II) is familiar with the permanency planning philosophy and processes; and

(III) is not employed by or under contract with the LIDDA [MRA] or a program provider.

(C) If a LIDDA [the MRA] is unable to locate a volunteer advocate locally, the LIDDA [MRA] must request assistance from a statewide advocacy organization in identifying an available volunteer advocate who meets the requirements described in subparagraph (B)(iii) of this paragraph. If the statewide advocacy organization is unable to assist the LIDDA [MRA] in identifying a volunteer advocate, the LIDDA [MRA] must document all efforts to designate a volunteer advocate in accordance with subparagraph (B) of this paragraph.

(b) Permanency planning reviews. A LIDDA [An MRA] must, within six months after the initial permanency planning meeting and every six months thereafter until an individual either turns 22 years of age or is no longer receiving supervised living or residential support:

(1) provide written notice to the LAR of a meeting to conduct a review of the individual's permanency plan no later than 21 calendar days before the meeting date and include a request for a response from the LAR;

(2) convene a meeting to review the individual's current permanency plan in accordance with subsection (a)(2)(C) - (E) of this section, with an emphasis on changes or additional information gathered since the last permanency plan was developed;

(3) develop a permanency plan in accordance with subsection (a)(2)(F) of this section;

(4) perform actions regarding a volunteer advocate as described in subsection (a)(3) of this section;

(5) complete the Permanency Planning Review Screen in DADS data system [CARE] within 10 calendar days after the meeting;

(6) ensure that approval for the individual to continue to reside in an institution is obtained every six months from the DADS commissioner and the HHSC executive commissioner;

(7) keep a copy of the Permanency Planning Review Approval Status View Screen from DADS data system [CARE] in the individual's record;

(8) provide a copy of the permanency plan to the program provider, the individual, and the LAR; and

(9) if the LIDDA [MRA] determines it is unable to locate the parent or LAR, notify the service coordinator of such determination.

(c) Provision of supervised living or residential support after enrollment. If a LIDDA [an MRA] receives information that an individual under 22 years of age who has been enrolled in the HCS Program moved from a family setting and started receiving supervised living or residential support, the LIDDA [MRA] must, within the timeframes described in the performance contract between DADS and the LIDDA [MRA]:

(1) provide an explanation of services and supports and other information in accordance with §9.158(e)(1) of this subchapter (relating to Process for Enrollment of Applicants); and

(2) take actions to conduct permanency planning as described in subsection (a) of this section.

§9.168. CDS Option.

(a) If supported home living, respite, nursing, employment assistance, supported employment, or cognitive rehabilitation therapy is included in an applicant's PDP, and the applicant's PDP does not include residential support, supervised living, or host home/companion care, the service coordinator [local authority] must:

(1) inform the applicant or LAR of the applicant's right to participate in the CDS option or discontinue participation in the CDS option at any time, except as provided in §41.405(a) of this title (relating to Suspension of Participation in the CDS Option);

(2) inform the applicant or LAR that the applicant or LAR may choose to have supported home living, respite, nursing, employment assistance, supported employment, or cognitive rehabilitation therapy provided through the CDS option;

(3) provide the applicant or LAR a copy of the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms, which are found at [www.dads.state.tx.us](http://www.dads.state.tx.us) and which contain information about the CDS option, including a description of FMS and support consultation;

(4) provide an oral explanation of the information contained in the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms to the applicant or LAR; and

(5) provide the applicant or LAR the opportunity to choose to participate in the CDS option and document the applicant's or LAR's choice on the Consumer Participation Choice form, which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(b) If an applicant or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the applicant or LAR regarding all FMSAs providing services in the LIDDA's [local authority's] local service area;

(2) document the applicant's or LAR's choice of FMSA on the Consumer Participation Choice form;

(3) document, in the individual's PDP, a description of the service provided through the CDS option; and

(4) document, in the individual's PDP, a description of the individual's service backup plan, if a backup plan is required by Chapter 41 of this title (relating to Consumer Directed Services Option).

(c) For an individual who is receiving supported home living, respite, nursing, employment assistance, supported employment, or cognitive rehabilitation therapy, and is not receiving residential support, supervised living, or host home/companion care, the service coordinator must, at least annually:

(1) inform the individual or LAR of the individual's right to participate in the CDS option or discontinue participation in the CDS option at any time, except as provided in §41.405(a) of this title;

(2) provide the individual or LAR a copy of the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities, and Employee Qualification Requirements forms, which are found at [www.dads.state.tx.us](http://www.dads.state.tx.us) and which contain information about the CDS option, including FMS and support consultation;

(3) provide an oral explanation of the information contained in the Consumer Directed Services Option Overview, Consumer Directed Services Responsibilities and Employee Qualification Requirements forms to the individual or LAR; and

(4) provide the individual or LAR the opportunity to choose to participate in the CDS option and document the individual's choice on the Consumer Participation Choice form, which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(d) If an individual or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the individual or LAR regarding all FMSAs providing services in the LIDDA's [local authority's] local service area;

(2) document the individual's or LAR's choice of FMSA on the Consumer Participation Choice form;

(3) document, in the individual's PDP, a description of the service provided through the CDS option;

(4) document, in the individual's PDP, a description of the individual's service backup plan, if a backup plan is required by Chapter 41 of this title; and

(5) notify the program provider of the individual's or LAR's decision to participate in the CDS option.

(e) The service coordinator must document in the individual's PDP that the information described in subsections (c) and (d)(1) of this section was provided to the individual or LAR.

(f) For an individual participating in the CDS option, the service coordinator must recommend that DADS terminate the individual's participation in the CDS option (that is, terminate FMS and support consultation) if the service coordinator determines that:

(1) the individual's continued participation in the CDS option poses a significant risk to the individual's health or safety; or

(2) the individual or LAR has not complied with Chapter 41, Subchapter B of this title (relating to Responsibilities of Employers and Designated Representatives).

(g) If the service coordinator makes a recommendation in accordance with subsection (f) of this section, the service coordinator must:

(1) document:

(A) a description of the service recommended for termination;

(B) the reasons why termination is recommended;

(C) a description of the attempts to resolve the issues before recommending termination;

(2) obtain other supporting documentation, as appropriate; and

(3) notify the program provider that the IPC needs to be revised.

(h) Within seven calendar days after notification in accordance with subsection (g)(3) of this section:

(1) the service coordinator and the program provider must comply with the requirements described in §9.166(d)(2)(A) - (D) of this subchapter (relating to Renewal and Revision of an IPC); and

(2) the service coordinator must send the documentation described in subsection (g)(1) of this section to DADS.

#### §9.170. Reimbursement.

Program provider reimbursement.

(1) A program provider is paid for services as described in this paragraph.

(A) DADS pays for supported home living, professional therapies, nursing, respite, employment assistance, and supported employment in accordance with the reimbursement rate for the specific service.

(B) DADS pays for host home/companion care, residential support, supervised living, and day habilitation in accordance with the individual's LON and the reimbursement rate for the specific service.

(C) DADS pays for adaptive aids, minor home modifications, and dental treatment based on the actual cost of the item and, if requested, a requisition fee in accordance with the *HCS Program Billing Guidelines*, which are available at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(D) DADS pays for TAS based on a Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS and the actual cost of the TAS as evidenced by purchase receipts required by the *HCS Program Billing Guidelines*.

(E) DADS pays for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment based on a Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS and the actual cost of the pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment as evidenced by documentation required by the *HCS Program Billing Guidelines*.

(F) Subject to the requirements in the *HCS Program Billing Guidelines*, DADS pays for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment regardless of whether the applicant enrolls with the program provider.

(2) If an individual's HCS Program services are suspended or terminated the program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination, except that the program provider may submit a claim for the first day of the individual's suspension or termination for the following services:

- (A) day habilitation;
- (B) supported home living;
- (C) respite;
- (D) employment assistance;
- (E) supported employment;
- (F) professional therapies; and
- (G) nursing.

(3) If the program provider submits a claim for an adaptive aid that costs \$500 or more or for a minor home modification that costs \$1,000 or more, the claim must be supported by a written assessment from a licensed professional specified by DADS in the *HCS Program Billing Guidelines* and other documentation as required by the *HCS Program Billing Guidelines*.

(4) DADS does not pay the program provider for a service or recoups any payments made to the program provider for a service if:

(A) except for an individual receiving TAS, pre-enrollment minor home modifications, or a pre-enrollment minor home modifications assessment, the individual receiving the service is, at the time the service was provided, ineligible for the HCS Program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;

(B) except for TAS, pre-enrollment minor home modifications, and a pre-enrollment minor home modifications assessment: [the service is provided to an individual during a period of time for which there is not a signed, dated, and authorized IPC for the individual;]

(i) the service is provided to an individual during a period of time for which there is not a signed, dated, and authorized IPC for the individual;

(ii) the service is provided during a period of time for which there is not a signed and dated ID/RC Assessment for the individual;

(iii) the service is provided during a period of time for which the individual did not have an LOC determination;

(iv) the service is not provided in accordance with a signed, dated, and authorized IPC meeting the requirements set forth in §9.159(c) of this subchapter (relating to IPC);

(v) the service is not provided in accordance with the individual's PDP or implementation plan;

(vi) the service is provided before the individual's enrollment date into the HCS Program; or

(vii) ~~[(C)]~~ the service is not included on the signed, dated, and authorized IPC of the individual in effect at the time the service was provided, except as permitted by §9.166(d) of this subchapter (relating to Renewal and Revision of an IPC);

(C) ~~[(D)]~~ the service ~~[provided does not meet the service definition or]~~ is not provided in accordance with the *HCS Program Billing Guidelines*;

~~[(D)]~~ ~~[(E)]~~ the program provider provides the supervised living or residential support service in a residence in which four individuals or other person receiving similar services live without DADS approval as required in §9.188 of this subchapter (relating to DADS Approval of Residences);

~~[(E)]~~ ~~[(F)]~~ the service is not documented in accordance with the *HCS Program Billing Guidelines*;

~~[(F)]~~ ~~[(G)]~~ the claim for the service does not meet the requirements in §49.311 of this title (relating to Claims Payment) or the *HCS Program Billing Guidelines*;

~~[(G)]~~ ~~[(H)]~~ the program provider does not have the documentation described in paragraph (3) of this section;

~~[(H)]~~ ~~[(I)]~~ DADS determines that the service would have been paid for by a source other than the HCS Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for the service;

~~[(I)]~~ ~~[(J)]~~ before including employment assistance on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

~~[(J)]~~ ~~[(K)]~~ before including supported employment on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

~~[(L)]~~ the service is provided during a period of time for which there is not a signed and dated ID/RC Assessment for the individual;

~~[(M)]~~ the service is provided during a period of time for which the individual did not have an LOC determination;

~~[(K)]~~ ~~[(N)]~~ the service is provided by a service provider who does not meet the qualifications to provide the service as described [delineated] in the HCS Program Billing Guidelines;

~~[(O)]~~ the service is not provided in accordance with a signed, dated, and authorized IPC meeting the requirements set forth in §9.159(e) of this subchapter (relating to IPC);

~~[(P)]~~ the service is not provided in accordance with the individual's PDP or implementation plan;

~~[(L)]~~ ~~[(Q)]~~ the service of host home/companion care, residential support, or supervised living is provided on the day of the individual's suspension or termination of HCS Program services;

~~[(R)]~~ the service is provided before the individual's enrollment date into the HCS Program; or

~~[(M)]~~ ~~[(S)]~~ the service was paid at an incorrect LON because the ID/RC Assessment electronically transmitted to DADS does not contain information identical to information on the signed and dated ID/RC Assessment;

~~[(N)]~~ for TAS, the service is not provided in accordance with a Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS; or

~~[(O)]~~ for pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment, the service is

not provided in accordance with a Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS.

(5) The program provider must refund to DADS any overpayment made to the program provider within 60 calendar days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from DADS, whichever is earlier.

(6) DADS conducts billing and payment reviews to monitor a program provider's compliance with this subchapter and the *HCS Program Billing Guidelines*. DADS conducts such reviews in accordance with the Billing and Payment Review Protocol set forth in the *HCS Program Billing Guidelines*. As a result of a billing and payment review, DADS may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with DADS instructions, a corrective action plan that improves the program provider's billing practices.

(7) A corrective action plan required by DADS in accordance with paragraph (6)(B) of this section must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to DADS within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by DADS before implementation.

(8) Within 30 calendar days after the corrective action plan is received by DADS, DADS notifies the program provider if a corrective action plan is approved or if changes to the plan are required.

(9) If DADS requires a program provider to develop and submit a corrective action plan in accordance with paragraph (6)(B) of this section and the program provider requests an administrative hearing for the recoupment in accordance with §9.186 of this subchapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. DADS notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(10) If the program provider does not submit the corrective action plan or complete the required corrective action within the time frames described in paragraph (7) of this section, DADS may impose a vendor hold on payments due to the program provider under the contract until the program provider takes the corrective action.

(11) If the program provider does not submit the corrective action plan or complete the required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (10) of this section, DADS may terminate the contract.

§9.171. *DADS Review of a Program Provider and Residential Visit.*

(a) The program provider must be in continuous compliance with the HCS Program certification principles contained in §§9.172 -

9.174 and §§9.177 - 9.180 of this subchapter (relating to Certification Principles: Mission, Development, and Philosophy of Program Operations; Certification Principles: Rights of Individuals; Certification Principles: Service Delivery; Certification Principles: Staff Member and Service Provider Requirements; Certification Principles: Quality Assurance; Certification Principles: Restraint; and Certification Principles: Prohibitions).

(b) DADS conducts on-site certification reviews of the program provider, at least annually, to evaluate evidence of the program provider's compliance with certification principles. Based on a review, DADS takes action as described in §9.185 of this subchapter (relating to Program Provider Compliance and Corrective Action).

(c) After a program provider has obtained a provisional contract, DADS conducts an initial on-site certification review within 120 calendar days after the date DADS approves the enrollment or transfer of the first individual to receive HCS Program services from the provider under the provisional contract.

(d) If DADS certifies a program provider after completion of an initial or annual certification review, the certification period is for no more than 365 calendar days.

(e) DADS may conduct reviews of the program provider at any time.

(f) During any review, DADS may review the HCS Program services provided to any individual to determine if the program provider is in compliance with the certification principles.

(g) DADS conducts an exit conference at the end of all on-site reviews, at a time and location determined by DADS, and at the exit conference gives the program provider a written preliminary review report.

(h) If a program provider disagrees with any of the findings in a preliminary review report, the program provider may request that DADS conduct an informal review of those findings.

(1) To request an informal review of any of the findings in the preliminary review report, the program provider must:

(A) complete DADS Form 3610 "Informal Review Request" as instructed on the form; and

(B) mail or fax the completed DADS Form 3610 to the address or fax number listed on the form.

(2) DADS must receive the completed form within seven calendar days after the date of the review exit conference.

(3) If DADS receives a timely request for an informal review, DADS:

(A) notifies the program provider in writing of the results of the informal review within 10 calendar days of receipt of the request; and

(B) sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

(i) If a program provider does not request an informal review as described in subsection (h) of this section, DADS sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

(j) In addition to the on-site certification reviews described in subsection (b) of this section, DADS conducts, at least annually, unannounced visits of each residence in which host home/companion care, residential support, or supervised living is provided to verify that the residence provides an environment that complies with DADS

*Waiver Survey and Certification Residential Checklist*, which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(k) Based on the information obtained from a visit described in subsection (j) of this section, DADS may:

(1) require the program provider to complete corrective action before the residential visit ends;

(2) require the program provider to submit evidence of corrective action within a time period determined by DADS [14 calendar days after the date of the residential visit]; or

(3) conduct a review of the program provider in accordance with this section.

§9.174. *Certification Principles: Service Delivery.*

(a) The program provider must:

(1) serve an eligible applicant who has selected the program provider unless the program provider's enrollment has reached its service capacity as identified in the DADS data system;

(2) serve an eligible applicant without regard to age, sex, race, or level of disability;

(3) provide or obtain as needed and without delay all HCS Program services;

(4) ensure that each applicant or individual, or LAR [on behalf of the applicant or individual], chooses [has chosen] where the individual or applicant will [is to] reside from available options consistent with the applicant's or individual's needs;

(5) encourage involvement of the LAR or family members and friends in all aspects of the individual's life and provide as much assistance and support as is possible and constructive;

(6) request from and encourage the parent or LAR of an individual under 22 years of age receiving supervised living or residential support to provide the program provider with the following information:

(A) the parent's or LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom DADS or the program provider may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the program provider of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(7) inform the parent or LAR that if the information described in paragraph (6) of this subsection is not provided or is not accurate and the service coordinator and DADS are unable to locate the parent or LAR as described in §9.190(e)(35) of this subchapter (relating to LIDDA [Local Authority] Requirements for Providing Service Coordination in the HCS Program) and §9.189 of this subchapter (relating to Referral to DFPS), DADS refers the case to DFPS;

(8) for an individual under 22 years of age receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision-making regarding the individual's care, including participating in meetings conducted by the program provider;

(B) take the following actions to assist a LIDDA [Local Authority] in conducting permanency planning:

(i) cooperate with the LIDDA [Local Authority] responsible for conducting permanency planning by:

(I) allowing access to an individual's records or providing other information in a timely manner as requested by the local authority or HHSC;

(II) participating in meetings to review the individual's permanency plan; and

(III) identifying, in coordination with the individual's LIDDA [Local Authority], activities, supports, and services that can be provided by the family, LAR, program provider, or the LIDDA [Local Authority] to prepare the individual for an alternative living arrangement;

(ii) encourage regular contact between the individual and the LAR and, if desired by the individual and LAR, between the individual and advocates and friends in the community to continue supportive and nurturing relationships;

(iii) keep a copy of the individual's current permanency plan in the individual's record; and

(iv) refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the individual to another institutional setting or to a community setting;

(C) if an emergency situation occurs, attempt to notify the parent or LAR and service coordinator as soon as the emergency situation allows and request a response from the parent or LAR; and

(D) if the program provider determines it is unable to locate the parent or LAR, notify the service coordinator of such determination;

(9) allow the individual's family members and friends access to an individual without arbitrary restrictions unless exceptional conditions are justified by the individual's service planning team and documented in the PDP;

(10) notify the service coordinator if changes in an individual's age, skills, attitudes, likes, dislikes, or conditions necessitate a change in residential, educational, or work settings;

(11) ensure that the individual who is living outside the family home is living in a residence that maximizes opportunities for interaction with community members to the greatest extent possible;

(12) ensure that the IPC for each individual is renewed, revised, and authorized by DADS in accordance with §9.166 of this subchapter (relating to Renewal and Revision of an IPC) and §9.160 of this subchapter (relating to DADS [~~DADS~~] Review of a Proposed IPC);

(13) ensure that HCS Program services identified in the individual's implementation plan are provided in an individualized manner and are based on the results of assessments of the individual's and the family's strengths, the individual's personal goals and the family's goals for the individual, and the individual's needs rather than which services are available;

(14) ensure that each individual's progress or lack of progress toward desired outcomes is documented in observable, measurable, or outcome-oriented terms;

(15) ensure that each individual has opportunities to develop relationships with peers with and without disabilities and receives support if the individual chooses to develop such relationships;

(16) ensure that individuals who perform work for the program provider are paid on the basis of their production or performance and at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work, and that compensation is based on local, state, and federal regulations, including Department of Labor regulations, as applicable;

(17) ensure that individuals who produce marketable goods and services in habilitation training programs are paid at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work. Compensation is based on requirements contained in the Fair Labor Standards Act, which include:

- (A) accurate recordings of individual production or performance;
- (B) valid and current time studies or monitoring as appropriate; and
- (C) prevailing wage rates;

(18) ensure that individuals provide no training, supervision, or care to other individuals unless they are qualified and compensated in accordance with local, state, and federal regulations, including Department of Labor regulations;

(19) unless contraindications are documented with justification by the service planning team, ensure that an individual's routine provides opportunities for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community;

(20) unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;

(21) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(22) assist the individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(23) ensure that, for an individual receiving host home/companion care, residential support, or supervised living:

(A) the individual lives in a home that is a typical residence within the community;

(B) the residence, neighborhood, and community meet the needs and choices of the individual and provide an environment that ensures the health, safety, comfort, and welfare of the individual;

(C) there is an adequate supply of hot water at all times at sinks and in bathing facilities;

(D) the temperature of the hot water at sinks and bathing facilities does not exceed 117 degrees Fahrenheit unless the program provider, in accordance with subsection (i) of this section, conducts a competency-based skills assessment evidencing that all individuals in the residence can independently regulate the temperature of the hot water from the sinks and bathing facilities;

(E) [(C)] unless contraindications are documented with justification by the service planning team, the individual lives near family and friends and needed or desired community resources consistent with the individual's choice, if possible;

(F) [(D)] the individual or LAR is involved in planning the individual's residential relocation, except in the case of an emergency;

(G) [(E)] unless contraindications are documented with justification by the service planning team, the individual has a door lock on the inside of the individual's bedroom door, if requested by the individual or LAR; and

(H) [(F)] the door lock installed in accordance with subparagraph (G) [(E)] of this paragraph:

- (i) is a single-action lock;
- (ii) can be unlocked with a key from the outside of the door by the program provider; and
- (iii) is not purchased and installed at the individual's or LAR's expense;

(24) ensure that adaptive aids are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) and include the full range of lifts, mobility aids, control switches/pneumatic switches and devices, environmental control units, medically necessary supplies, and communication aids and repair and maintenance of the aids as determined by the individual's needs;

(25) together with an individual's service coordinator, ensure the coordination and compatibility of HCS Program services with non-HCS Program services;

(26) ensure that an individual has a current implementation plan;

(27) ensure that:

(A) the following professional therapy services are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us):

- (i) audiology services;
- (ii) speech/language pathology services;
- (iii) occupational therapy services;



- (iv) physical therapy services;
- (v) dietary services;
- (vi) social work services;
- (vii) behavioral support; and
- (viii) cognitive rehabilitation therapy; and

(B) if the service planning team determines that an individual may need cognitive rehabilitation therapy, the program provider:

(i) in coordination with the service coordinator, assists the individual in obtaining, in accordance with the Medicaid State Plan, a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as a non-HCS Program service; and

(ii) has a qualified professional as described in §9.177(q) of this subchapter (relating to Certification Principles: Staff Member and Service Provider Requirements) provide and monitor the provision of cognitive rehabilitation therapy to the individual in accordance with the plan of care described in clause (i) of this subparagraph;

(28) ensure that day habilitation is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), including:

(A) assisting individuals in acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside successfully in the community;

(B) providing individuals with age-appropriate activities that enhance self-esteem and maximize functional level;

(C) complementing any professional therapies listed in the IPC;

(D) reinforcing skills or lessons taught in school, therapy, or other settings;

(E) training and support activities that promote the individual's integration and participation in the community;

(F) providing assistance for the individual who cannot manage personal care needs during day habilitation activities; and

(G) providing transportation during day habilitation activities as necessary for the individual's participation in day habilitation activities;

(29) ensure that dental treatment is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), including:

(A) emergency dental treatment;

(B) preventive dental treatment;

(C) therapeutic dental treatment; and

(D) orthodontic dental treatment, excluding cosmetic orthodontia;

(30) ensure that minor home modifications are provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), limited to the following categories [~~including~~]:

(A) purchase and repair of wheelchair ramps;

(B) modifications to bathroom facilities;

(C) modifications to kitchen facilities; [~~and~~]

(D) specialized accessibility and safety adaptations or additions; and [~~including repair and maintenance;~~]

(E) repair and maintenance of minor home modifications not covered by a warranty;

(31) ensure that nursing is provided in accordance with the individual's PDP, IPC, implementation plan, Texas Occupations Code, Chapter 301 (Nursing Practice Act); 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice); 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions); and Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) and consists of performing health care activities and monitoring the individual's health conditions, including:

(A) administering medication;

(B) monitoring the individual's use of medications;

(C) monitoring health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified from a nursing assessment;

(D) assisting the individual to secure emergency medical services;

(E) making referrals for appropriate medical services;

(F) performing health care procedures ordered or prescribed by a physician or medical practitioner and required by standards of professional practice or law to be performed by an RN or LVN;

(G) delegating nursing tasks to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;

(H) teaching an unlicensed service provider about the specific health needs of an individual;

(I) performing an assessment of an individual's health condition;

(J) an RN doing the following:

(i) performing a nursing assessment for each individual:

(I) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(II) as determined necessary by an RN, including if the individual's health needs change;

(ii) documenting information from performance of a nursing assessment;

(iii) if an individual is receiving a service through the CDS option, providing a copy of the documentation described in clause (ii) of this subparagraph to the individual's service coordinator;

(iv) developing the nursing service portion of an individual's implementation plan, which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(v) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider; and

(K) in accordance with Texas Human Resources Code, Chapter 161:

(i) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(I) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(II) the medication is:

- (-a-) an oral medication;
- (-b-) a topical medication; or
- (-c-) a metered dose inhaler;

(III) the medication is administered to the individual for a predictable or stable condition; and

(IV) the unlicensed service provider has been:

(-a-) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

(-b-) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

(ii) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition;

(32) ensure that supported home living is available to an individual living in his or her own home or the home of his or her natural or adoptive family members, or to an individual receiving foster care services from DFPS;

(33) ensure that supported home living is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(34) ensure that HCS host home/companion care is provided:

(A) by a host home/companion care provider who lives in the residence in which no more than three individuals or other persons receiving similar services are living at any one time; and

(B) in a residence in which the program provider does not hold a property interest;

(35) ensure that host home/companion care is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(36) ensure that supervised living is provided:

(A) in a four-person residence that is approved in accordance with §9.188 of this subchapter (relating to DADS Approval of Residences) or a three-person residence;

(B) by a service provider who provides services and supports as needed by the individuals residing in the residence and is present in the residence and able to respond to the needs of the individuals during normal sleeping hours; and

(C) only with approval by the DADS commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC executive commissioner after such 12-month period, if provided to an individual under 22 years of age;

(37) ensure that supervised living is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(38) ensure that residential support is provided:

(A) in a four-person residence that is approved in accordance with §9.188 of this subchapter or a three-person residence;

(B) by a service provider who is present in the residence and awake whenever an individual is present in the residence;

(C) by service providers assigned on a daily shift schedule that includes at least one complete change of service providers each day; and

(D) only with approval by the DADS commissioner or designee for the initial six months and one six-month extension and only with approval by the HHSC executive commissioner after such 12-month period, if provided to an individual under 22 years of age;

(39) ensure that residential support is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us), and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of professional therapy activities;

(G) assistance with medications and the performance of tasks delegated by an RN;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation;

(40) if making a recommendation to the service planning team that the individual receive residential support, document the reasons for the recommendation, which may include:

(A) the individual's medical condition;

(B) a behavior displayed by the individual that poses a danger to the individual or to others; or

(C) the individual's need for assistance with activities of daily living during normal sleeping hours;

(41) ensure that respite is available on a 24-hour increment or any part of that increment to individuals living in their family homes;

(42) ensure that respite is provided in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) and:

(A) includes:

(i) training in self-help and independent living skills;

(ii) providing room and board when respite is provided in a setting other than the individual's normal residence;

(iii) assisting with:

(I) ongoing provision of needed waiver services [~~excluding supported home living~~]; and

(II) securing and providing transportation; and

(B) is only provided [~~to individuals who are~~]:

(i) to individuals who are not receiving residential support, supervised living, or host home/companion care; and

(ii) [~~in need of emergency or planned short-term care~~] when the unpaid caregiver is temporarily unavailable to provide supports [~~due to non-routine circumstances~~];

(43) provide respite in the residence of an individual or in other locations, including residences in which host home/companion care, supervised living, or residential support is provided or in a respite facility or camp, that meet HCS Program requirements and afford an environment that ensures the health, safety, comfort, and welfare of the individual.

(A) If respite is provided in the residence of another individual, the program provider must obtain permission from that individual or LAR and ensure that the respite visit will cause no threat to the health, safety, or welfare of that individual.

(B) If respite is provided in the residence of another individual, the program provider must ensure that:

(i) no more than three individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which host home/companion care is provided;

(ii) no more than three individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which only supervised living is provided; and

(iii) no more than four individuals receiving HCS Program services and persons receiving similar services for which the program provider is reimbursed are served in a residence in which residential support is provided.

(C) If respite is provided in a respite facility, the program provider must:

(i) ensure that the facility is not a residence;

(ii) ensure that no more than six individuals receive services in the facility at any one time; and

(iii) obtain written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances before initiating services in the facility if more than three individuals receive services in the facility at any one time.

(D) If respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association.

(E) The program provider must not provide respite in an institution such as an ICF/IID, [~~skilled~~] nursing facility, or hospital;

(44) ensure that employment assistance:

(A) is assistance provided to an individual to help the individual locate competitive employment in the community;

(B) consists of a service provider performing the following activities:

(i) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(ii) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(iii) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(iv) transporting an individual to help the individual locate competitive employment in the community; and

(v) participating in service planning team meetings;

(C) is provided in accordance with an individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us);

(D) is not provided to an individual with the individual present at the same time that respite, supported home living, day habilitation, or supported employment is provided; and

(E) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(i) paying an employer:

(I) to encourage the employer to hire an individual; or

(II) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(ii) paying an individual:

(I) as an incentive to participate in employment assistance activities; or

(II) for expenses associated with the start-up costs or operating expenses of the individual's business;

(45) ensure that supported employment:

(A) is assistance provided to an individual:

(i) who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which persons without disabilities are employed;

(ii) in order for the individual to sustain competitive employment; and

(iii) in accordance with the individual's PDP, IPC, implementation plan, and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us);

(B) consists of a service provider performing the following activities:

(i) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(ii) transporting an individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(iii) participating in service planning team meetings;

(C) is not provided to an individual with the individual present at the same time that respite, supported home living, day habilitation, or supported employment is provided; and

(D) does not include:

(i) sheltered work or other similar types of vocational services furnished in specialized facilities; or

(ii) using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses such as:

(I) paying an employer:

(-a-) to encourage the employer to hire an individual; or

(-b-) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(II) paying an individual:

(-a-) as an incentive to participate in supported employment activities; or

(-b-) for expenses associated with the start-up costs or operating expenses of the individual's business;

(46) inform the service coordinator of changes related to an individual's residential setting that do not require a change to the individual's IPC;

(47) maintain a system of delivering HCS Program services that is continuously responsive to changes in the individual's personal goals, condition, abilities, and needs as identified by the service planning team;

(48) ensure that appropriate staff members, service providers, and the service coordinator are informed of a circumstance or event that occurs in an individual's life or a change to an individual's condition that may affect the provision of services to the individual;

(49) maintain current information in the DADS data system about the individual and the individual's LAR, including:

(A) the individual's full name, address, location code, and phone number; and

(B) the LAR's full name, address, and phone number;

(50) maintain a single record related to HCS Program services provided to an individual for an IPC year that includes:

(A) the IPC;

(B) the PDP;

(C) the implementation plan;

(D) a behavior support plan, if one has been developed;

(E) documentation that describes the individual's progress or lack of progress on the implementation plan;

(F) documentation that describes any changes to an individual's personal goals, condition, abilities, or needs;

(G) the ID/RC Assessment;

(H) documentation supporting the recommended LON, including the ICAP booklet, assessments and interventions by qualified professionals, and time sheets of service providers;

(I) results and recommendations from individualized assessments that support the individual's current need for each service included in the IPC;

(J) documentation concerning any use of restraint as described in §9.179(c)(2) and (3) of this subchapter (relating to Certification Principles: Restraint);

(K) documentation related to the individual's suspension from HCS Program service; ~~and~~

(L) for an individual under 22 years of age, a copy of the permanency plan; and

(M) documentation required by subsections (g)(2)(A) and (h)(2)(A) of this section;

(51) upon request by the service coordinator:

(A) permit the service coordinator access to the record that is required by paragraph (50) of this subsection; and

(B) provide the service coordinator a legible copy of a document in the record at no charge to the service coordinator;

(52) provide a copy of the following documents to the service coordinator:

(A) an individual's IPC; and

(B) an individual's ID/RC Assessment;

(53) notify the service coordinator if the program provider has reason to believe that an individual is no longer eligible for HCS Program services or an individual or LAR has requested termination of all HCS Program services;

(54) if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual; ~~and~~

(55) for an HCS Program service identified on the PDP as critical to meeting the individual's health and safety:

(A) develop a service backup plan that:

(i) contains the name of the critical service;

(ii) specifies the period of time in which an interruption to the critical service would result in an adverse effect to the individual's health or safety; and

(iii) in the event of a service interruption resulting in an adverse effect as described in clause (ii) of this subparagraph, describes the actions the program provider will take to ensure the individual's health and safety;

(B) ensure that:

(i) if the action in the service backup plan required by subparagraph (A) of this paragraph identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety; and

(ii) a person identified in the service backup plan, if paid to provide the service, meets the qualifications described in this subchapter; and

(C) if the service backup plan required by subparagraph (A) of this paragraph is implemented:

(i) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

(ii) document whether or not the plan was effective; and

(iii) revise the plan if the program provider determines the plan was ineffective;[-]

(56) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the HCS Program:

(A) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator;

(B) assist in the implementation of the applicant's transition plan as described in the plan; and

(C) be physically present for the pre-move site review and assist the service coordinator during the review as requested; and

(57) for 180 days after an individual 21 years of age or older has enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility:

(A) be physically present for each post-move monitoring visit and assist the service coordinator during the visit as requested;

(B) assist in the implementation of the individual's transition plan as described in the plan;

(C) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator; and

(D) within one calendar day after becoming aware of an event or condition that may put the individual at risk of admission or readmission to a nursing facility, notify the service planning team of the event or condition.

(b) A program provider may suspend HCS Program services because an individual is temporarily admitted to a setting described in §9.155(c) [~~§9.155(d)~~] of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services).

(1) If a program provider suspends HCS Program services, the program provider must:

(A) notify DADS of the suspension by entering data in the DADS data system in accordance with DADS instructions; and

(B) notify the service coordinator of the suspension within one business day after services are suspended.

(2) A program provider may not suspend HCS Program services for more than 270 calendar days without approval from DADS as described in §9.190(e)(20)(C) of this subchapter.

(c) A program provider may determine that an individual does not require a nursing assessment if:

(1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(2) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(d) If an individual or LAR refuses a nursing assessment described in subsection (a)(31)(J)(i) of this section, the program provider must not:

(1) provide nursing services to the individual; or

(2) provide host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, or day habilitation to the individual unless:

(A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and

(B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

(e) If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (c) of this section, the program provider must:

(1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

(2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(f) If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.190(e)(21)(A) of this subchapter, the program provider must immediately send the written notification described in subsection (e) of this section to DADS.

(g) The program provider must provide TAS in accordance with this subsection.

(1) The program provider must:

(A) provide TAS to an applicant for whom the program provider receives from the service coordinator a completed Home and Community-based Services Transition Assistance Services (TAS) Assessment and Authorization form authorized by DADS, as described in §9.158(l)(6)(C) of this subchapter (relating to Process for Enrollment of Applicants);

(B) purchase TAS for the applicant within the monetary amount identified on the form;

(C) deliver to the applicant the specific TAS identified on the form;

(D) ensure TAS is provided in accordance with the individual's PDP and with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us); and

(E) complete the delivery of TAS at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO unless the delay in completion is beyond the control of the program provider.

(2) If the program provider does not deliver TAS in accordance with paragraph (1) of this subsection, the program provider must:

(A) document the following:

(i) a description of the pending TAS;

(ii) the reason for the delay;

(iii) the date the program provider anticipates it will deliver the pending TAS or specific reasons why the program provider cannot anticipate a delivery date; and

(iv) a description of the program provider's ongoing efforts to deliver the TAS; and

(B) at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO, provide the information described in subparagraph (A) of this paragraph to:

(i) the applicant or LAR; and

(ii) the service coordinator.

(3) Within one business day after the TAS has been delivered, the program provider must notify the service coordinator and the applicant or LAR that the TAS has been delivered.

(h) The program provider must provide pre-enrollment minor home modifications and a pre-enrollment minor home modifications assessment in accordance with this subsection.

(1) The program provider must:

(A) complete a pre-enrollment minor home modifications assessment in accordance with the *HCS Program Billing Guidelines*;

(B) provide pre-enrollment minor home modifications to an applicant for whom the program provider receives from the service coordinator a completed Pre-enrollment Minor Home Modifications/Assessments Authorization form authorized by DADS, as described in §9.158(l)(8)(C) of this subchapter;

(C) provide to the applicant the specific pre-enrollment minor home modifications identified on the form;

(D) provide the pre-enrollment minor home modifications for the applicant within the monetary amount identified on the form;

(E) ensure pre-enrollment minor home modifications and pre-enrollment minor home modifications assessments are provided in accordance with Appendix C of the HCS Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us); and

(F) complete the pre-enrollment minor home modifications at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO unless the delay in completion is beyond the control of the program provider.

(2) If the program provider does not complete pre-enrollment minor home modifications in accordance with paragraph (1) of this subsection, the program provider must:

(A) document the following:

(i) a description of the pending modifications;

(ii) the reason for the delay;

(iii) the date the program provider anticipates it will complete the pending modifications or specific reasons why the program provider cannot anticipate a completion date; and

(iv) a description of the program provider's ongoing efforts to complete the modifications; and

(B) at least two days before the date of the applicant's discharge from the nursing facility, ICF/IID, or GRO, provide the information described in subparagraph (A) of this paragraph to:

(i) the applicant or LAR; and

(ii) the service coordinator.

(3) Within one business day after completion of the pre-enrollment minor home modifications, the program provider must notify

the service coordinator and the applicant or LAR that the modifications have been completed.

(i) If the program provider conducts the competency-based skills assessment described in subsection (a)(23)(D) of this section:

(1) the assessment must:

(A) be conducted by a staff person other than a service provider of residential support, supervised living, or host home/companion care who works or lives in the residence;

(B) be conducted for each individual;

(C) evaluate the individual's cognitive and physical ability to independently mix or regulate the hot water temperature without assistance or guidance from each sink and bathing facility in the residence; and

(D) be based on a face-to-face demonstration by the individual; and

(2) the program provider must:

(A) complete the assessment at least annually;

(B) document the results of the assessment; and

(C) keep a copy of the results in the residence.

*§9.177. Certification Principles: Staff Member and Service Provider Requirements.*

(a) The program provider must ensure the continuous availability of trained and qualified service providers to deliver the required services as determined by the individual's needs.

(b) The program provider must employ or contract with a person or entity of the individual's or LAR's choice in accordance with this subsection.

(1) Except as provided by paragraph (2) of this subsection, the program provider must employ or contract with a person or entity of the individual's or LAR's choice to provide an HCS Program service to the individual if that person or entity:

(A) is qualified to provide the service;

(B) provides the service at or below the direct services portion of the applicable HCS Program rate; and

(C) is willing to contract with or be employed by the program provider to provide the service in accordance with this subchapter.

(2) The program provider may choose not to employ or contract with a person or entity of the individual's or LAR's choice in accordance with paragraph (1) of this subsection for good cause. The program provider must document the good cause.

(3) The requirement in paragraph (1)(B) of this subsection does not prohibit the program provider and the person or entity from agreeing to payment for the service in an amount that is more than the direct services portion of the applicable HCS Program rate.

(4) If a program provider contracts with a person or entity to provide TAS, the person or entity must have a contract to provide TAS in accordance with Chapter 49 of this title (relating to Contracting for Community Services).

(c) The program provider must comply with each applicable regulation required by the State of Texas in ensuring that its operations and staff members and service providers meet state certification, licensure, or regulation for any tasks performed or services delivered in part or in entirety for the HCS Program.

(d) The program provider must conduct initial and periodic training that ensures:

(1) staff members and service providers are qualified to deliver services as required by the current needs and characteristics of the individuals to whom they deliver services, including the use of restraint in accordance with §9.179 of this subchapter (relating to Certification Principles: Restraint); and

(2) staff members, service providers, and volunteers comply with §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations).

(e) The program provider must implement and maintain personnel practices that safeguard individuals against infectious and communicable diseases.

(f) The program provider's operations must prevent:

(1) conflicts of interest between the program provider, a staff member, or a service provider and an individual, such as the acceptance of payment for goods or services from which the program provider, staff member, or service provider could financially benefit, except payment for room and board;

(2) financial impropriety toward an individual including:

(A) unauthorized disclosure of information related to an individual's finances; and

(B) the purchase of goods that an individual cannot use with the individual's funds;

(3) abuse, neglect, or exploitation of an individual;

(4) damage to or prevention of an individual's access to the individual's possessions; and

(5) threats of the actions described in paragraphs (2) - (4) of this subsection.

(g) The program provider must employ or contract with a person who oversees the provision of HCS Program services to an individual. The person must:

(1) have at least three years paid work experience in planning and providing HCS Program services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to HCS Program services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

(B) participation as a member of a microboard as verified, in writing, by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(h) The program provider must ensure that a service provider of day habilitation, supported home living, host home/companion care, supervised living, residential support, and respite [services] is at least 18 years of age and:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served.

(i) The program provider must ensure that each service provider of professional therapies is currently qualified by being licensed by the State of Texas or certified in the specific area for which services are delivered or be providing services in accordance with state law.

(j) The program provider must ensure that a service provider of behavioral support services:

(1) meets one of the following:

(A) ~~[(4)]~~ is licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501;

(B) ~~[(2)]~~ is licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501;

(C) ~~[(3)]~~ has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;

(D) ~~[(4)]~~ is certified by DADS as described in §5.161 of this title (relating to Certified Authorized Provider [TDMHMR-Certified Psychologist]);

(E) ~~[(5)]~~ is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505;

(F) ~~[(6)]~~ is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; or

(G) ~~[(7)]~~ is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.; and

(2) completes training required by DADS as described in the HCS Handbook.

(k) The program provider must ensure that a service provider who provides transportation:

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.

(l) The program provider must ensure that dental treatment is provided by a dentist licensed by the Texas State Board of Dental Examiners in accordance with Texas Occupations Code, Chapter 256.

(m) The program provider must ensure that nursing services are provided by a nurse who is currently qualified by being licensed by the Texas Board of Nursing as an RN or LVN.

(n) The program provider must comply with §49.304 of this title (relating to Background Checks).

(o) A program provider must comply with §49.312(a) of this title (relating to Personal Attendants).

(p) If the service provider of supported home living is employed by or contracts with a contractor of a program provider, the

program provider must ensure that the contractor complies with subsection (o) of this section as if the contractor were the program provider.

(q) The program provider must ensure that a service provider of cognitive rehabilitation therapy is:

(1) a psychologist licensed in accordance with Texas Occupations Code, Chapter 501;

(2) a speech-language pathologist licensed in accordance with Texas Occupations Code, Chapter 401; or

(3) an occupational therapist licensed in accordance with Texas Occupations Code, Chapter 454.

(r) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment: ~~is at least 18 years of age; is not the LAR of the individual receiving employment assistance or supported employment from the service provider; and has:~~

(1) is at least 18 years of age;

(2) is not:

(A) the spouse of the individual; or

(B) a parent of the individual if the individual is a minor; and

(3) has:

(A) [(4)] a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(B) [(2)] an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(C) [(3)] a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(s) A program provider must ensure that the experience required by subsection (r) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(t) A program provider must ensure that a service provider of TAS:

(1) is at least 18 years of age;

(2) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma;

(3) is not a relative of the applicant;

(4) is not the LAR of the applicant;

(5) does not live with the applicant; and

(6) is capable of providing TAS and complying with the documentation requirements described in §9.174(g)(2)(A) of this subchapter (relating to Certification Principles: Service Delivery).

§9.178. *Certification Principles: Quality Assurance.*



(a) In the provision of HCS Program services to an individual, the program provider must promote the active and maximum cooperation with generic service agencies, non-HCS Program service providers, and advocates or other actively involved persons.

(b) The program provider must ensure personalized service delivery based upon the choices made by each individual or LAR and those choices that are available to persons without an intellectual disability or other disability.

(c) Before providing services to an individual in a residence in which host home/companion care, supervised living, or residential support is provided, and annually thereafter, the program provider must:

(1) conduct an on-site inspection to ensure that, based on the individual's needs, the environment is healthy, comfortable, safe, appropriate, and typical of other residences in the community, suited for the individual's abilities, and is in compliance with applicable federal, state, and local regulations for the community in which the individual lives;

(2) ensure that the service coordinator is provided with a copy of the results of the on-site inspection within five calendar days after completing the inspection;

(3) complete any action identified in the on-site inspection for a residence in which supervised living or residential support will be provided to ensure that the residence meets the needs of the individual; and

(4) ensure completion of any action identified in the on-site inspection for a residence in which host home/companion care will be provided to ensure that the residence meets the needs of the individual.

(d) The program provider must ensure that:

(1) emergency plans are maintained in each residence in which host home/companion care, supervised living or residential support is provided;

(2) the emergency plans address relevant emergencies appropriate for the type of service, geographic location, and the individuals living in the residence;

(3) the individuals and service providers follow the plans during drills and actual emergencies; and

(4) documentation of drills and responses to actual emergencies are maintained in each residence.

(e) A program provider must comply with the requirements in this subsection regarding a four-person residence.

(1) Before providing residential support in a four-person residence, the program provider must:

(A) ensure that the four-person residence meets one of the following:

(i) is certified by:

(I) the local fire safety authority having jurisdiction in the location of the residence as being in compliance with the applicable portions of the National Fire Protection Association 101: Life Safety Code (Life Safety Code) as determined by the local fire safety authority;

(II) the local fire safety authority having jurisdiction in the location of the residence as being in compliance with the applicable portions of the International Fire Code (IFC) as determined by the local fire safety authority; or

(III) the Texas State Fire Marshal's Office as being in compliance with the applicable portions of the Life Safety Code as determined by the Texas State Fire Marshal's Office; or

(ii) as described in paragraph (2) of this subsection, is certified by DADS as being in compliance with the portions of the Life Safety Code applicable to small residential board and care facilities and most recently adopted by the Texas State Fire Marshal's Office; and

(B) obtain DADS approval of the residence in accordance with §9.188 of this subchapter (relating to DADS Approval of Residences).

(2) DADS inspects for certification as described in paragraph (1)(A)(ii) of this subsection only if the program provider submits to DADS Architectural Unit:

(A) one of the following:

(i) if the four-person residence is located in a jurisdiction with a local fire safety authority:

(I) a completed DADS Form 5606 available at [www.dads.state.tx.us](http://www.dads.state.tx.us) documenting that the local fire safety authority having jurisdiction refused to inspect for certification using the code (i.e. the Life Safety Code or IFC) for that jurisdiction; and

(II) written documentation from the Texas State Fire Marshal's Office that it refused to inspect for certification using the Life Safety Code; or

(ii) if the four-person residence is located in a jurisdiction without a local fire safety authority, written documentation from the Texas State Fire Marshal's Office that it refused to inspect for certification using the Life Safety Code; and

(B) a completed DADS form "Request for Life Safety Inspection-HCS Four-Person Home" available at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(3) The program provider must:

(A) obtain the certification required by paragraph (1)(A) of this subsection annually; and

(B) ensure that a four-person residence:

(i) contains a copy of the most recent inspection of the residence by the local fire safety authority, Texas State Fire Marshal's Office, or DADS; and

(ii) is in continuous compliance with all applicable local building codes and ordinances and state and federal laws, rules, and regulations.

(f) The program provider must establish an ongoing consumer/advocate advisory committee composed of individuals, LARs, community representatives, and family members that meets at least quarterly. The committee:

(1) at least annually, reviews the information provided to the committee by the program provider in accordance with subsection (p)(6) of this section; and

(2) based on the information reviewed, makes recommendations to the program provider for improvements to the processes and operations of the program provider.

(g) The program provider must make available all records, reports, and other information related to the delivery of HCS Program services as requested by DADS, other authorized agencies, or CMS [the

Centers for Medicare and Medicaid Services] and deliver such items, as requested, to a specified location.

(h) The program provider must conduct, at least annually, a satisfaction survey of individuals and LARs and take action regarding any areas of dissatisfaction.

(i) The program provider must comply with §49.309 of this title (relating to Complaint Process).

(j) The program provider must:

(1) ensure that the individual and LAR are informed of how to report allegations of abuse, neglect, or exploitation to DFPS and are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing;

(2) comply with §49.310(4) of this title (relating to Abuse, Neglect, and Exploitation Allegations); and

(3) ensure that all staff members, service providers, and volunteers:

(A) are instructed to report to DFPS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited;

(B) are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

(C) comply with §49.310(3)(B) of this title.

(k) If the program provider suspects an individual has been or is being abused, neglected, or exploited or is notified of an allegation of abuse, neglect, or exploitation, the program provider must take necessary actions to secure the safety of the individual, including:

(1) obtaining immediate and ongoing medical or psychological services for the individual as necessary;

(2) if necessary, restricting access by the alleged perpetrator of the abuse, neglect, or exploitation to the individual or other individuals pending investigation of the allegation; and

(3) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the individual, the individual's LAR, and the service coordinator of the allegation report and the actions that have been or will be taken.

(l) Staff members, service providers, and volunteers must cooperate with the DFPS investigation of an allegation of abuse, neglect, or exploitation, including:

(1) providing complete access to all HCS Program service sites owned, operated, or controlled by the program provider;

(2) providing complete access to individuals and program provider personnel;

(3) providing access to all records pertinent to the investigation of the allegation; and

(4) preserving and protecting any evidence related to the allegation in accordance with DFPS instructions.

(m) The program provider must:

(1) promptly, but not later than five calendar days after the program provider's receipt of a DFPS investigation report:

(A) notify the individual, the LAR, and the service coordinator of:

(i) the investigation finding; and

(ii) the corrective action taken by the program provider in response to the DFPS investigation; and

(B) notify the individual or LAR of:

(i) the process to appeal the investigation finding as described in Chapter 711, Subchapter M of this title (relating to Requesting an Appeal if You are the Reporter, Alleged Victim, Legal Guardian, or with Disability Rights Texas); and

(ii) the process for requesting a copy of the investigative report from the program provider;

(2) report to DADS in accordance with DADS instructions the program provider's response to the DFPS investigation that involves a staff member or service provider within 14 calendar days after the program provider's receipt of the investigation report; and

(3) upon request of the individual or LAR, provide to the individual or LAR a copy of the DFPS investigative report after concealing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.

(n) If abuse, neglect, or exploitation is confirmed by the DFPS investigation, the program provider must take appropriate action to prevent the reoccurrence of abuse, neglect or exploitation, including, when warranted, disciplinary action against or termination of the employment of a staff member confirmed by the DFPS investigation to have committed abuse, neglect, and exploitation.

(o) In all respite facilities and all residences in which a service provider of residential assistance or the program provider hold a property interest, the program provider must post in a conspicuous location:

(1) the name, address, and telephone number of the program provider;

(2) the effective date of the contract; and

(3) the name of the legal entity named on the contract.

(p) At least annually, the program provider must:

(1) evaluate information about the satisfaction of individuals and LARs with the program provider's services and identify program process improvements to increase the satisfaction;

(2) review complaints, as described in §49.309 of this title, and identify program process improvements to reduce the filing of complaints;

(3) review incidents of abuse, neglect, or exploitation and identify program process improvements that will prevent the reoccurrence of such incidents and improve service delivery;

(4) review the reasons for terminating HCS Program services [to individuals] and identify any related need for program process improvements;

(5) evaluate critical incident data described in subsection (y) of this section and compare its use of restraint to aggregate data provided by DADS at [www.dads.state.tx.us](http://www.dads.state.tx.us) and identify program process improvements that will prevent the reoccurrence of restraints and improve service delivery;

(6) provide all information the program provider reviewed, evaluated, and created as described in paragraphs (1) - (5) of this subsection to the consumer/advocate advisory committee required by subsection (f) of this section;

(7) implement any program process improvements identified by the program provider in accordance with this subsection; and

(8) review recommendations made by the consumer/advocate advisory committee as described in subsection (f)(2) of this section and implement the recommendations approved by the program provider.

(q) The program provider must ensure that all personal information concerning an individual, such as lists of names, addresses, and records obtained by the program provider is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the program provider's HCS Program, and is otherwise neither directly nor indirectly used or disclosed unless the consent of the individual to whom the information applies or his or her LAR is obtained beforehand.

(r) The program provider must comply with this subsection regarding charges against an individual's personal funds.

(1) The program provider must, in accordance with this paragraph, collect a monthly amount for room from an individual who lives in a three-person or four-person residence. The cost for room must consist only of:

(A) an amount equal to:

(i) rent of a comparable dwelling in the same geographical area that is unfurnished; or

(ii) the program provider's ownership expenses, limited to the interest portion of a mortgage payment, depreciation expense, property taxes, neighborhood association fees, and property insurance; and

(B) the cost of:

(i) shared appliances, electronics, and housewares;

(ii) shared furniture;

(iii) monitoring for a security system;

(iv) monitoring for a fire alarm system;

(v) property maintenance, including personnel costs, supplies, lawn maintenance, pest control services, carpet cleaning, septic tank services, and painting;

(vi) utilities, limited to electricity, gas, water, garbage collection, and a landline telephone; and

(vii) shared television and Internet service used by the individuals who live in the residence.

(2) Except as provided in subparagraphs (B) and (C) of this paragraph, a program provider must collect a monthly amount for board from an individual who lives in a three-person or four-person residence.

(A) The cost for board must consist only of the cost of food, including food purchased for an individual to consume while away from the residence as a replacement for food and snacks normally prepared in the residence, and of supplies used for cooking and serving, such as utensils and paper products.

(B) A program provider is not required to collect a monthly amount for board from an individual if collecting such an amount may make the individual ineligible for the Supplemental Nutrition Assistance Program operated by HHSC.

(C) A program provider must not collect a monthly amount for board from an individual if the individual chooses to purchase the individual's own food, as documented in the individual's implementation plan.

(3) To determine the maximum room and board charge for each individual, a program provider must:

(A) divide the room cost described in paragraph (1) of this subsection by the number of residents receiving HCS Program services or similar services that the residence has been developed to support plus the number of service providers and other persons who live in the residence;

(B) divide the board cost described in paragraph (2) of this subsection by the number of persons consuming the food; and

(C) add the amounts calculated in accordance with subparagraphs (A) and (B) of this paragraph.

(4) A program provider must not increase the charge for room and board because a resident moves from the residence.

(5) A program provider:

(A) must not charge an individual a room and board amount that exceeds an amount determined in accordance with paragraphs (1) - (3) of this subsection; and

(B) must maintain documentation demonstrating that the room and board charge was determined in accordance with paragraphs (1) - (3) of this subsection.

(6) Before an individual or LAR selects a residence, a program provider must provide the room and board charge, in writing, to the individual or LAR.

(7) Except as provided in paragraph (8) of this subsection, a program provider may not charge or collect payment from any person for room and board provided to an individual receiving host home/companion care.

(8) If a program provider makes a payment to an individual's host home/companion care provider while waiting for the individual's federal or state benefits to be approved, the program provider may seek reimbursement from the individual for such payments.

(9) A program provider who manages personal funds of an individual who receives host home/companion care:

(A) may pay a room and board charge for the individual that is less than the foster/companion care provider's cost of room and board, as determined using the calculations described in paragraphs (1) and (2) of this subsection for a three-person or four-person residence, divided by the number of persons living in the host home/companion care provider's home;

(B) must pay the host home/companion care provider directly from the individual's account; and

(C) must not pay a host home/companion care provider a room and board charge that exceeds the host home/companion care provider's cost of room and board, as determined using the calculations described in paragraphs (1) and (2) of this subsection for a three-person or four-person residence, divided by the number of persons living in the host home/companion care provider's home.

(10) For an item or service other than room and board, the program provider must apply a consistent method in assessing a charge against the individual's personal funds that ensures that the charge for the item or service is reasonable and comparable to the cost of a similar item or service generally available in the community.

(s) The program provider must ensure that the individual or LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds before the charges are assessed.

(t) The program provider must not assess charges against the individual's personal funds for costs for items or services reimbursed through the HCS Program.

(u) At the written request of an individual or LAR, the program provider must manage the individual's personal funds entrusted to the program provider, without charge to the individual or LAR in accordance with this subsection.

(1) The program provider must not commingle the individual's personal funds with the program provider's funds.

(2) The program provider must maintain a separate, detailed record of:

(A) all deposits into the individual's account; and

(B) all expenditures from the individual's account that includes:

(i) the amount of the expenditure;

(ii) the date of the expenditure;

(iii) the person to whom the expenditure was made;

(iv) except as described in clause (vi) of this subparagraph, a written statement issued by the person to whom the expenditure was made that includes the date the statement was created and the cost of the item or service paid for;

(v) if the statement described in clause (iv) of this subparagraph documents an expenditure for more than one individual, the amount allocated to each individual identified on the statement; and

(vi) if the expenditure is made to the individual for personal spending money, an acknowledgement signed by the individual indicating that the funds were received.

(3) The program provider may accrue an expense for necessary items and services for which the individual's personal funds are not available for payment, such as room and board, medical and dental services, legal fees or fines, and essential clothing.

(4) If an expense is accrued as described in paragraph (3) of this subsection, the program provider must enter into a written payment plan with the individual or LAR for reimbursement of the funds.

(v) If the program provider determines that an individual's behavior may require the implementation of behavior management techniques involving intrusive interventions or restriction of the individual's rights, the program provider must comply with this subsection.

(1) The program provider must:

(A) obtain an assessment of the individual's needs and current level and severity of the behavior; and

(B) ensure that a service provider of behavioral support services:

(i) develops, with input from the individual, LAR, program provider, and actively involved persons, a behavior support plan that includes the use of techniques appropriate to the level and severity of the behavior; and

(ii) considers the effects of the techniques on the individual's physical and psychological well-being in developing the plan.

(2) The behavior support plan must:

(A) describe how the behavioral data concerning the behavior is collected and monitored;

(B) allow for the decrease in the use of the techniques based on the behavioral data; and

(C) allow for revision of the plan when desired behavior is not displayed or the techniques are not effective.

(3) Before implementation of the behavior support plan, the program provider must:

(A) obtain written consent from the individual or LAR to implement the plan;

(B) provide written notification to the individual or LAR of the right to discontinue implementation of the plan at any time; and

(C) notify the individual's service coordinator of the plan.

(4) The program provider must, at least annually:

(A) review the effectiveness of the techniques and determine whether the behavior support plan needs to be continued; and

(B) notify the service coordinator if the plan needs to be continued.

(w) The program provider must report the death of an individual to DADS and the service coordinator by the end of the next business day following the death or the program provider's learning of the death and, if the program provider reasonably believes that the LAR does not know of the individual's death, to the LAR as soon as possible, but not later than 24 hours after the program provider learns of the individual's death.

(x) A program provider must not discharge or otherwise retaliate against:

(1) a staff member, service provider, individual, or other person who files a complaint, presents a grievance, or otherwise provides good faith information relating to the:

(A) misuse of restraint by the program provider;

(B) use of seclusion by the program provider; or

(C) possible abuse, neglect, or exploitation of an individual; or

(2) an individual because someone on behalf of the individual files a complaint, presents a grievance, or otherwise provides good faith information relating to the:

(A) misuse of restraint by the program provider;

(B) use of seclusion by the program provider; or

(C) possible abuse, neglect, or exploitation of an individual.

(y) A program provider must enter critical incident data in the DADS data system no later than 30 calendar days after the last day of the month being reported in accordance with the HCS Provider User Guide.

(z) The program provider must ensure that:

(1) the name and phone number of an alternate to the CEO of the program provider is entered in the DADS data system; and

(2) the alternate to the CEO:

(A) performs the duties of the CEO during the CEO's absence; and

(B) acts as the contact person in a DFPS investigation if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual and complies with subsections (k) - (n) of this section.

§9.186. *Program Provider's Right to Administrative Hearing.*

(a) A program provider may request an administrative hearing if DADS takes or proposes to take the following action:

- (1) vendor hold;
- (2) contract termination [~~of the program provider agreement~~];
- (3) recoupment of payments made to the program provider; or
- (4) denial of a program provider's claim for payment, including denial of a retroactive LOC and denial of a recommended LON.

(b) If the basis of an administrative hearing requested under this section is a dispute regarding an LON assignment, the program provider may receive an administrative hearing only if reconsideration was requested by the program provider in accordance with §9.165 of this subchapter (relating to Reconsideration of LON Assignment).

§9.188. *DADS Approval of Residences.*

(a) A program provider must obtain DADS written approval in accordance with subsection (b) of this section before providing residential support in a four-person residence.

(b) To obtain approval of a four-person residence, the program provider must submit the following written documentation to DADS:

- (1) the address and county of the residence;
  - (2) certification from the program provider that the program provider intends to provide residential support to one or more individuals who will live in the residence;
  - (3) one of the certifications required by §9.178(e)(1)(A) of this subchapter (relating to Certification Principles: Quality Assurance); and
  - (4) written certification from the program provider that the residence to be approved is not the residence of any person except a person permitted to live in the residence as described in §9.153(22)(D) [~~§9.153(20)~~] of this subchapter (relating to Definitions).
- (c) DADS notifies the program provider in writing of its approval or disapproval of the four-person residence within 14 calendar days after DADS receives the documentation specified in subsection (b) of this section.

§9.189. *Referral to DFPS.*

If, within one year after the date DADS receives the notification described in §9.190(e)(35) or (36) of this subchapter (relating to LIDDA [~~Local Authority~~] Requirements for Providing Service Coordination in the HCS Program), DADS is unable to locate the parent or LAR, DADS refers the case to:

- (1) the Child Protective Services Division of DFPS if the individual is under 18 years of age; or
- (2) the Adult Protective Services Division of DFPS if the individual is 18-21 [~~18-22~~] years of age.

§9.190. *LIDDA* [~~Local Authority~~] *Requirements for Providing Service Coordination in the HCS Program.*

(a) In addition to the requirements described in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability), a LIDDA [~~local authority~~] must,

in the provision of service coordination in the HCS Program, ensure compliance with the requirements in this subchapter and Chapter 41 of this title (relating to Consumer Directed Services Option).

(b) A LIDDA [~~The local authority~~] must employ service coordinators who:

(1) meet the minimum qualifications and LIDDA [~~local authority~~] staff training requirements specified in Chapter 2, Subchapter L of this title; and

(2) have received training about:

(A) the HCS Program, including the requirements of this subchapter and the HCS Program services specified in §9.154 of this subchapter (relating to Description of the HCS Program); and [-]

(B) Chapter 41 of this title.

(c) A LIDDA [~~local authority~~] must have a process for receiving and resolving complaints from a program provider related to the LIDDA's [~~local authority's~~] provision of service coordination or the LIDDA's [~~local authority's~~] process to enroll an applicant in the HCS Program.

(d) If, as a result of monitoring, the service coordinator identifies a concern with the implementation of the PDP, the LIDDA [~~local authority~~] must ensure that the concern is communicated to the program provider and attempts made to resolve the concern. The LIDDA [~~local authority~~] may refer an unresolved concern to DADS Consumer Rights and Services.

(e) A service coordinator must:

(1) assist an individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) provide an applicant or individual, LAR, or family member with a written copy of the rights of the individual as described in §9.173(b) of this subchapter (relating to Certification Principles: Rights of Individuals) and the booklet titled *Your Rights In a Home and Community-Based Services Program* (which is found at [www.dads.state.tx.us](http://www.dads.state.tx.us)) and an oral explanation of such rights:

(A) upon enrollment in the HCS Program;

(B) upon revision of the booklet;

(C) upon request; and

(D) upon change in an individual's legal status (that is when the individual turns 18 years of age, is appointed a guardian, or loses a guardian);

(3) document the provision of the rights described in §9.173(b) of this subchapter and the booklet and oral explanation required by paragraph (2) of this subsection and ensure that the documentation is signed by:

(A) the individual or LAR; and

(B) the service coordinator;

(4) ensure that, at the time an applicant is enrolled, the applicant or LAR is informed orally and in writing of the following processes for filing complaints:

(A) processes for filing complaints with the LIDDA [~~local authority~~] about the provision of service coordination; and

(B) processes for filing complaints about the provision of HCS Program services including:

(i) the telephone number of the LIDDA [~~local authority~~] to file a complaint;

(ii) the toll-free telephone number of DADS to file a complaint; and

(iii) the toll-free telephone number of DFPS (1-800-647-7418) to report an allegation of abuse, neglect, or exploitation;

(5) maintain for an individual for an IPC year:

(A) a copy of the IPC;

(B) the PDP;

(C) a copy of the ID/RC Assessment;

(D) documentation of the activities performed by the service coordinator in providing service coordination; and

(E) any other pertinent information related to the individual;

(6) initiate, coordinate, and facilitate person-directed planning, including scheduling service planning team meetings;

(7) develop for an individual a full range of services and resources using generic service agencies, non-HCS Program service providers, and advocates or other actively involved persons to meet the needs of the individual as those needs are identified;

(8) ensure that the PDP for an applicant or individual:

(A) is developed, reviewed, and updated in accordance with:

(i) §9.158(j)(4)(A) [~~§9.158(k)(3)~~] of this subchapter (relating to Process for Enrollment of Applicants);

(ii) §9.166 of this subchapter (relating to Renewal and Revision of an IPC); and

(iii) §2.556 of this title (relating to MRA's Responsibilities);

(B) states, for each HCS Program service, other than supervised living and residential support, whether the service is critical to the individual's health and safety as determined by the service planning team;

(9) participate in the development, renewal, and revision of an individual's IPC in accordance with §9.158 and §9.166 of this subchapter;

(10) ensure that the service planning team participates in the renewal and revision of the IPC for an individual in accordance with §9.166 of this subchapter and ensure that the service planning team completes other responsibilities and activities as described in this subchapter;

(11) notify the service planning team of the information conveyed to the service coordinator pursuant to §9.178(v)(3)(C) and (4)(B) of this subchapter (relating to Certification Principle: Quality Assurance);

(12) if a change to an individual's PDP is needed, other than as required by §9.166 of this subchapter:

(A) communicate the need for the change to the individual or LAR, the program provider, and other appropriate persons; and

(B) revise the PDP as necessary;

(13) provide an individual's program provider a copy of the individual's current PDP;

(14) monitor the delivery of HCS Program services and non-HCS Program services to an individual;

(15) document whether an individual progresses toward desired outcomes identified on the individual's PDP;

(16) together with the program provider, ensure the coordination and compatibility of HCS Program services with non-HCS Program services, including, in coordination with the program provider, assisting an individual in obtaining a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as described in §9.174(a)(27)(B) of this subchapter (relating to Certification Principles: Service Delivery);

(17) for an individual who has had a guardian appointed, determine, at least annually, if the letters of guardianship are current;

(18) for an individual who has not had a guardian appointed, make a referral of guardianship to a court, if appropriate;

(19) immediately notify the program provider if the service coordinator becomes aware that an emergency necessitates the provision of an HCS Program service to ensure the individual's health or safety and the service is not on the IPC or exceeds the amount on the IPC;

(20) if informed by the program provider that an individual's HCS Program services have been suspended:

(A) request the program provider enter necessary information in the DADS data system to inform DADS of the suspension;

(B) review the individual's status and document in the individual's record the reasons for continuing the suspension, at least every 90 calendar days after the effective date of the suspension; and

(C) to continue suspension of the services for more than 270 calendar days, submit to DADS written documentation of each review made in accordance with subparagraph (B) of this paragraph and a request for approval by DADS to continue the suspension;

(21) if notified by the program provider that an individual or LAR has refused a nursing assessment and that the program provider has determined it cannot ensure the individual's health, safety, and welfare in the provision of a service as described in §9.174(e) of this title (relating to Certification Principles: Service Delivery):

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) host home/companion care, residential support, supervised living, supported home living, respite, employment assistance, supported employment, or day habilitation, if the individual needs one of those services and the program provider has determined that it cannot ensure the health and safety of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(22) notify the program provider if the service coordinator becomes aware that an individual has been admitted to a setting described in §9.155(c) [~~§9.155(d)~~] of this subchapter (relating to Eligibility Criteria and Suspension of HCS Program Services);

(23) if the service coordinator determines that HCS Program services provided to an individual should be terminated, including for a reason described in §9.158(k)(14)(A) or (B) [~~§9.158(l)(11)~~] of this subchapter:

(A) document a description of:

(i) the situation that resulted in the service coordinator's determination that services should be terminated;

(ii) the attempts by the service coordinator to resolve the situation; and

(B) send a written request to terminate the individual's HCS Program services to DADS and include the documentation required by subparagraph (A) of this paragraph;

(C) provide a copy of the written request and the documentation required by subparagraph (A) of this paragraph to the program provider;

(24) if an individual requests termination of all HCS Program services, the service coordinator must, within ten calendar days after the individual's request:

(A) inform the individual or LAR of:

(i) the individual's option to transfer to another program provider;

(ii) the consequences of terminating HCS Program services; and

(iii) possible service resources upon termination; and

(B) submit documentation to DADS that:

(i) states the reason the individual is making the request; and

(ii) demonstrates that the individual or LAR was provided the information required by subparagraph (A)(ii) and (iii) of this paragraph;

(25) in accordance with DADS instructions, manage the process to transfer an individual's HCS Program services from one program provider to another or transfer from one FMSA to another [in accordance with DADS instructions], including:

(A) informing the individual or LAR who requests a transfer to another program provider or FMSA that the service coordinator will manage the transfer process;

(B) informing the individual or LAR that the individual or LAR may choose: [to receive HCS Program services from any available program provider (that is, a program provider whose enrollment has not reached its service capacity in the DADS data system) or FMSA; and ]

(i) to receive HCS Program services from any program provider that is in the geographic location preferred by the individual or LAR and whose enrollment has not reached its service capacity in the DADS data system; or

(ii) to transfer to any FMSA in the geographic location preferred by the individual or LAR; and

(C) if the individual or LAR has not selected another program provider or FMSA, providing [provide] the individual or LAR with a list of and contact information for [available] HCS Program providers and FMSAs [and contact information] in the geographic location [locations] preferred by the individual or LAR;

(26) be objective in assisting an individual or LAR in selecting a program provider or FMSA;

(27) at the time of assignment and as changes occur, ensure that an individual and LAR and program provider are informed of the name of the individual's service coordinator and how to contact the service coordinator;

(28) unless contraindications are documented with justification by the service planning team, ensure that a school-age individual receives educational services in a six-hour-per-day program, five days per week, provided by the local school district and that no individual receives educational services at a state supported living center or at a state center;

(29) unless contraindications are documented with justification by the service planning team, ensure that an adult individual under retirement age is participating in a day activity of the individual's choice that promotes achievement of PDP outcomes for at least six hours per day, five days per week;

(30) unless contraindications are documented with justification by the service planning team, ensure that a pre-school-age individual receives an early childhood education with appropriate activities and services, including small group and individual play with peers without disabilities;

(31) unless contraindications are documented with justification by the service planning team, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with the individual's or LAR's choice;

(32) unless contraindications are documented with justification by the service planning team, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(33) assist an individual to meet as many of the individual's needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(34) for an individual receiving host home/companion care, residential support, or supervised living, ensure that the individual or LAR is involved in planning the individual's residential relocation, except in a case of an emergency;

(35) if the program provider notifies the service coordinator that the program provider is unable to locate the parent or LAR in accordance with §9.174(a)(8)(D) of this subchapter (relating to Certification Principles: Service Delivery) or the LIDDA [local authority] notifies the service coordinator that the LIDDA [local authority] is unable to locate the parent or LAR in accordance with §9.167(b)(9) of this subchapter (relating to Permanency Planning):

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (37)(A) - (B) of this subsection; and

(B) notify DADS, no later than 30 calendar days after the date the service coordinator determines the service coordinator is unable to locate the parent or LAR, of the determination and request that DADS initiate a search for the parent or LAR;

(36) if the service coordinator determines that a parent's or LAR's contact information described in paragraph (37)(A) of this subsection is no longer current:

(A) make reasonable attempts to locate the parent or LAR by contacting a person identified by the parent or LAR in the contact information described in paragraph (37)(B) of this subsection; and

(B) notify DADS, no later than 30 calendar days after the date the service coordinator determines the service coordinator is

unable to locate the parent or LAR, of the determination and request that DADS initiate a search for the parent or LAR;

(37) request from and encourage the parent or LAR of an individual under 22 years of age [the age of 22 years] requesting or receiving supervised living or residential support to provide the service coordinator with the following information:

(A) the parent's or LAR's:

- (i) name;
- (ii) address;
- (iii) telephone number;
- (iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and
- (v) place of employment and the employer's address and telephone number;

(B) name, address, and telephone number of a relative of the individual or other person whom DADS or the service coordinator may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the parent's or LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the parent or LAR agrees to:

(i) notify the service coordinator of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual;

(38) within three business days after initiating supervised living or residential support to an individual under 22 years of age:

(A) provide the information listed in subparagraph (B) of this paragraph to the following:

(i) the CRCG for the county in which the individual's LAR lives (see [www.hhsc.state.tx.us](http://www.hhsc.state.tx.us) for a listing of CRCG chairpersons by county); and

(ii) the local school district for the area in which the three- or four-person residence is located, if the individual is at least three years of age, or the early childhood intervention (ECI) program for the county in which the residence is located, if the individual is less than three years of age (see <http://www.dars.state.tx.us/ecis/searchprogram.asp> to search for an ECI program by zip code or by county); and

(B) as required by subparagraph (A) of this paragraph, provide the following information to the entities described in subparagraph (A) of this paragraph:

- (i) the individual's full name;
- (ii) the individual's gender;
- (iii) the individual's ethnicity;
- (iv) the individual's birth date;
- (v) the individual's social security number;

(vi) the LAR's name, address, and county of residence;

(vii) the date of initiation of supervised living or residential support;

(viii) the address where supervised living or residential support is provided; and

(ix) the name and phone number of the person providing the information; ~~and~~

(39) for an applicant or individual under 22 years of age seeking or receiving supervised living or residential support:

(A) make reasonable accommodations to promote the participation of the LAR in all planning and decision making regarding the individual's care, including participating in:

(i) the initial development and annual review of the individual's PDP;

(ii) decision making regarding the individual's medical care;

(iii) routine service planning team meetings; and

(iv) decision making and other activities involving the individual's health and safety;

(B) ensure that reasonable accommodations include:

(i) conducting a meeting in person or by telephone, as mutually agreed upon by the program provider and the LAR;

(ii) conducting a meeting at a time and location, if the meeting is in person, that is mutually agreed upon by the program provider and the LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate;

(C) provide written notice to the LAR of a meeting to conduct an annual review of the individual's PDP at least 21 calendar days before the meeting date and request a response from the LAR regarding whether the LAR intends to participate in the annual review;

(D) before an individual who is under 18 years of age, or who is 18-21 [~~18-22~~] years of age and has an LAR, moves to another residence operated by the program provider, attempt to obtain consent for the move from the LAR unless the move is made because of a serious risk to the health or safety of the individual or another person; and

(E) document compliance with subparagraphs (A) - (D) of this paragraph in the individual's record; [-]

(40) conduct:

(A) a pre-move site review for an applicant 21 years of age or older who is enrolling in the HCS Program from a nursing facility; and

(B) post-move monitoring visits for an individual 21 years of age or older who enrolled in the HCS Program from a nursing facility or has enrolled in the HCS Program as a diversion from admission to a nursing facility; and

(41) at least monthly, have one face-to-face contact with an individual whose HCS Program services have not been suspended to provide service coordination.



§9.191. LIDDA [MRA] Compliance Review.

(a) DADS conducts a compliance review of each LIDDA [MRA], at least annually, to determine if the LIDDA [MRA] is in compliance with:

(1) Chapter 2, Subchapter L, of this title (relating to Service Coordination For Individuals with an Intellectual Disability [Mental Retardation]);

(2) §9.190 of this subchapter (relating to LIDDA [MRA] Requirements for Providing Service Coordination in the HCS Program); and

(3) other requirements for the LIDDA [MRA] as described in this subchapter.

(b) If any item of noncompliance remains uncorrected by the LIDDA [MRA] at the time of the review exit conference, the LIDDA [MRA] must submit to DADS a plan of correction in accordance with the performance contract [~~between DADS and the MRA~~]. DADS may take action as specified in the performance contract if the LIDDA [MRA] fails to submit or implement an approved plan of correction.

§9.192. Service Limits.

(a) The following limits apply to an individual's HCS Program services:

(1) for adaptive aids, \$10,000 during an IPC year;

(2) for dental treatment, \$1,000 during an IPC year;

(3) for minor home modifications and pre-enrollment minor home modifications combined:

(A) \$7,500 during the time the individual is enrolled in the HCS Program, which may be paid in one or more IPC years; and

(B) after reaching the \$7,500 limit described in subparagraph (A) of this paragraph, a maximum of \$300 for repair and maintenance during the IPC year; [~~and~~]

(4) for respite, 300 hours during an IPC year; and [-]

(5) for TAS:

(A) \$2,500 if the applicant's proposed initial IPC does not include residential support, supervised living, or host home/companion care; or

(B) \$1,000 if the applicant's proposed initial IPC includes residential support, supervised living, or host home/companion care.

(b) An individual may receive TAS only once in the individual's lifetime.

(c) [~~(b)~~] A program provider may request, in accordance with the HCS Program Billing Guidelines, authorization of a requisition fee:

(1) for dental treatment that is in addition to the \$1,000 service limit described in subsection (a)(2) of this section; or

(2) for a minor home modification that is in addition to the \$7,500 service limit described in subsection (a)(3)(A) of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

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Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 438-3693



**40 TAC §9.157**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

**STATUTORY AUTHORITY**

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

*§9.157. Maintenance of HCS Program Interest List.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3693



**SUBCHAPTER N. TEXAS HOME LIVING (TXHML) PROGRAM**

**40 TAC §§9.551 - 9.556, 9.558, 9.560 - 9.563, 9.566 - 9.568, 9.570, 9.573, 9.574, 9.577 - 9.580, 9.582, 9.583**

**STATUTORY AUTHORITY**

The amendments and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services

Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments and new section affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§9.551. *Purpose.*

The purpose of this subchapter is to describe:

- (1) the eligibility criteria and process for enrollment in the TxHmL Program;
- (2) the requirements for TxHmL Program provider certification and process for certifying and sanctioning program providers in the TxHmL Program;
- (3) the requirements for reimbursement of program providers; and
- (4) the requirements for LIDDAs [~~local authorities~~] and the process for correcting practices found to be out of compliance with the TxHmL Program principles for a LIDDA [~~local authority~~].

§9.552. *Application.*

This subchapter applies to:

- (1) LIDDAs; [~~local authorities;~~]
- (2) program providers; [ ~~and~~]
- (3) applicants [~~persons applying for or receiving TxHmL Program services~~] and their LARs; and
- (4) individuals and their LARs.

§9.553. *Definitions.*

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

- (1) Applicant--A Texas resident seeking services in the TxHmL Program.
- (2) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).
- (3) Calendar day--Any day, including weekends and holidays.
- (4) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).
- (5) CMS--Centers for Medicare and Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.
- (6) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.
- (7) Condition of a serious nature--Except as provided in paragraph (14) of this section, a condition in which a program provider's noncompliance with a certification principle caused or

could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.

- (8) Contract--A provisional contract or a standard contract.
- (9) Critical incident--An event listed in the TxHmL Provider User Guide found at <http://www2.mhmr.state.tx.us/655/cis/training/txhtmlGuide.html>.
- (10) DADS--The Department of Aging and Disability Services.
- (11) DFPS--The Department of Family and Protective Services.
- (12) FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.
- (13) FMSA--Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.
- (14) Hazard to health or safety--A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.
- (15) HCS Program--The Home and Community-based Services Program operated by DADS as authorized by CMS in accordance with §1915(c) of the Social Security Act.
- (16) HHSC--The Texas Health and Human Services Commission.
- (17) ICAP--Inventory for Client and Agency Planning.
- (18) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a [A] facility in which ICF/IID Program services are provided and that is: [-]
  - (A) licensed in accordance with THSC, Chapter 252; or
  - (B) certified by DADS.
- (19) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.
- (20) ICF/MR Program--ICF/IID Program.
- (21) ID/RC Assessment--A form used by DADS for LOC determination and LON assignment.
- (22) Implementation Plan--A written document developed by a program provider for an individual that, for each TxHmL Program service on the individual's IPC to be provided by the program provider [not provided through the CDS option], includes:
  - (A) a list of outcomes identified in the PDP that will be addressed using TxHmL Program services;
  - (B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:
    - (i) observable, measurable, and outcome-oriented; and
    - (ii) derived from assessments of the individual's strengths, personal goals, and needs;
  - (C) a target date for completion of each objective;
  - (D) the number of [TxHmL Program] units of TxHmL Program services [service] needed to complete each objective;

(E) the frequency and duration of TxHmL Program services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(23) Individual--A person enrolled in the TxHmL Program.

(24) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(25) IPC--Individual plan of care. A written plan [document] that: [describes]

(A) states:

(i) the type and amount of each TxHmL Program service to be provided to an individual during an IPC year; and

(ii) the [medical and other] services and supports to be provided to the individual through resources other than TxHmL [non-TxHmL] Program services, including natural supports, medical services, and educational services; and [resources.]

(B) is authorized by DADS.

(26) IPC cost--Estimated annual cost of program services included on an IPC.

(27) IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(28) LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(29) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with THSC §533A.035.

(30) [(29)] LOC--Level of care. A determination made by DADS about an applicant or individual as part of the TxHmL Program eligibility determination process based on data electronically transmitted on the ID/RC Assessment.

~~{(30) Local authority--An entity described in Texas Health and Safety Code, §531.002(11) to which the executive commissioner of HHSC has delegated authority and responsibility in accordance with Texas Health and Safety Code, §533.035(a).}~~

(31) LON--Level of need. An assignment given by DADS for an applicant or individual that is derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the individual and from selected items on the ID/RC Assessment.

(32) LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(33) Microboard--A program provider:

(A) that is a non-profit corporation;

(i) that is created and operated by no more than 10 persons, including an individual;

(ii) the purpose of which is to address the needs of the individual and directly manage the provision of the TxHmL Program services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of TxHmL Program services; and

(B) that has a service capacity designated in the DADS data system of no more than three individuals.

(34) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty.

~~{(34) Non-routine circumstances--An event that occurs unexpectedly or does not occur on a regular basis, such as a night off, a vacation, an illness, an injury, a hospitalization, or a funeral.}~~

(35) Military family member--An applicant who is the spouse or child (regardless of age) of:

(A) a military member who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch; or

(B) a former military member who had declared and maintained Texas as the member's state of legal residence in the manner provided by the applicable military branch:

(i) who was killed in action; or

(ii) who died while in service.

(36) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(37) Nursing facility--A facility licensed in accordance with THSC, Chapter 242.

(38) [(35)] Own home or family home--A residence that is not:

(A) an ICF/IID [licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS];

(B) a nursing facility [licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242];

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC [Texas Health and Safety Code], Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a residential facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(39) [(36)] Performance contract--A written agreement between DADS and a LIDDA [local authority] for the performance of delegated functions, including those [provision of one or more functions as] described in THSC, §533A.035 [§533.035(b)].

(40) [(37)] PDP--Person-directed plan. A written plan, based on person-directed planning and developed with [for] an applicant or individual in accordance with the DADS Person-Directed Plan form and discovery tool found at [www.dads.state.tx.us](http://www.dads.state.tx.us), [§9.567 of this subchapter (relating to Process for Enrollment)] that describes the supports and services necessary to achieve the desired outcomes identified by the applicant, individual, or LAR and ensure the applicant's or individual's health and safety [on behalf of the applicant].

(41) Post-move monitoring visit--As described in §17.503 of this title, a visit conducted by the service coordinator in the individual's residence and other locations, as determined by the service planning team, for an individual who enrolled in the TxHmL Program from a nursing facility or enrolled in the TxHmL Program as a diversion from admission to a nursing facility. The purpose of the visit is to review the individual's residence and other locations to:

(A) assess whether essential supports identified in the transition plan are in place;

(B) identify gaps in care; and

(C) address such gaps, if any, to reduce the risk of crisis, re-admission to a nursing facility, or other negative outcome.

(42) Pre-move site review--As described in §17.503 of this title, (relating to Transition Planning for a Designated Resident), a review conducted by the service coordinator in the planned residence and other locations, as determined by the service planning team, for an applicant transitioning from a nursing facility to the TxHmL Program. The purpose of the review is to ensure that essential services and supports described in the applicant's transition plan are in place before the applicant moves to the residence or receives services in the other locations.

(43) [(38)] Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide TxHmL Program services, excluding an FMSA.

(44) [(39)] Provisional contract--An initial contract that DADS enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(45) [(40)] Related condition--A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(46) [(41)] Respite facility--A site that is not a residence and that is owned or leased by a program provider for the purpose of providing out-of-home respite to not more than six individuals receiving TxHmL Program services or other persons receiving similar services at any one time.

(47) [(42)] RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(48) [(43)] Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(49) [(44)] Service backup plan--A plan that ensures continuity of a service that is critical to an individual's health and safety if service delivery is interrupted.

(50) Service coordination--A service as defined in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability).

(51) [(45)] Service coordinator--An employee of a LIDDA [local authority] who provides service coordination to an individual [is responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services including TxHmL Program services].

(52) [(46)] Service planning team--One of the following: A planning team constituted by a local authority consisting of an applicant or individual, LAR, service coordinator, and other persons chosen by the applicant, individual, or LAR.

(A) for an applicant or individual other than one described in subparagraphs (B) or (C) of this paragraph, a planning team consisting of:

(i) an applicant or individual and LAR;

(ii) service coordinator; and

(iii) other persons chosen by the applicant, individual, or LAR, for example, a staff member of the program provider, a family member, a friend, or a teacher;

(B) for an applicant 21 years of age or older who is residing in a nursing facility and enrolling in the TxHmL Program, a planning team consisting of:

(i) the applicant and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) providers of specialized services;

(v) a nursing facility staff person who is familiar with the applicant's needs;

(vi) other persons chosen by the applicant or LAR, for example, a family member, a friend, or a teacher; and

(vii) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability; or

(C) for an individual 21 years of age or older who has enrolled in the TxHmL program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility, for 180 days after enrollment, a planning team consisting of:

(i) the individual and LAR;

(ii) service coordinator;

(iii) a staff member of the program provider;

(iv) other persons chosen by the individual or LAR, for example, a family member, a friend, or a teacher; and

(v) at the discretion of the LIDDA, other persons who are directly involved in the delivery of services to persons with an intellectual or developmental disability.

(53) [(47)] Service provider--A person, who may be a staff member, who directly provides a TxHmL Program service to an individual.

(54) Specialized services--Services defined in §17.102 of this title (relating to Definitions).

(55) [(48)] Staff member--An employee or contractor of a TxHmL Program provider.

(56) [(49)] Standard contract--A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(57) [(50)] State supported living center--A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by DADS.

(58) [(51)] Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(59) [(52)] TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(60) [(53)] THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(61) Transition plan--As described in §17.503 of this title, a written plan developed by the service planning team for an applicant residing in a nursing facility who is enrolling in the TxHmL Program. A transition plan includes the essential and nonessential services and supports the applicant needs to transition from a nursing facility to a community setting.

(62) [(54)] TxHmL Program--The Texas Home Living Program, operated by DADS and approved by CMS in accordance

with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(63) [(55)] Vendor hold--A temporary suspension of payments that are due to a program provider under a contract.

*§9.554. Description of the TxHmL Program.*

(a) The TxHmL Program is a Medicaid waiver program approved by [the] CMS pursuant to §1915(c) of the Social Security Act. It provides community-based services and supports to eligible individuals who live in their own homes or in their family homes. The TxHmL Program is operated by DADS under the authority of HHSC.

(b) DADS has grouped the counties of the state of Texas into geographical areas, referred to as "local service areas," each of which is served by a LIDDA [local authority]. DADS has further grouped the local service areas into "waiver contract areas." A list of the counties included in each local service area and waiver contract area is available at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(1) A program provider may provide TxHmL Program services only to persons residing in the counties specified in its contract.

(2) A program provider must have a separate contract for each waiver contract area served by the program provider.

(3) A program provider may have a contract to serve one or more local service areas within a waiver contract area, but the program provider must serve all of the counties within each local service area covered by the contract.

(4) A program provider may not have more than one contract per waiver contract area.

(c) A LIDDA [The local authority] must provide service coordination to an individual who is enrolled in the TxHmL Program in accordance with this subchapter.

(d) TxHmL Program services, as described [defined] in §9.555 of this subchapter (relating to Description [Definitions] of TxHmL Program Services), are selected by the service planning team for inclusion in an applicant's or individual's IPC to:

(1) ensure the applicant's or individual's health and welfare in the community;

(2) supplement rather than replace the applicant's or individual's natural supports and other non-TxHmL Program sources for which the applicant or individual may be eligible; and

(3) prevent the applicant's or individual's admission to institutional services.

(e) The CDS option is a service delivery option, as described in Chapter 41 of this title (relating to Consumer Directed Services Option), in which an individual or LAR employs and retains service providers and directs the delivery of one or more TxHmL Program services that may be provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option).

(f) A program provider must comply with all applicable state and federal laws, rules, and regulations, including Chapter 49 of this title (relating to Contracting for Community Services).

*§9.555. Description [Definitions] of TxHmL Program Services [Service Components].*

(a) Community support provides services and supports in an individual's home and at other community locations that are necessary to achieve outcomes identified in an individual's PDP.

(1) Community support provides habilitative or support activities that:

(A) provide or foster improvement of or facilitate an individual's ability to perform functional living skills and other activities of daily living;

(B) assist an individual to develop competencies in maintaining the individual's home life;

(C) foster improvement of or facilitate an individual's ability and opportunity to:

(i) participate in typical community activities including activities that lead to successful employment;

(ii) access and use of services and resources available to all citizens in the individual's community;

(iii) interact with members of the community;

(iv) access and use available non-TxHmL Program services or supports for which the individual may be eligible; and

(v) establish or maintain relationships with people who are not paid service providers that expand or sustain the individual's natural support network.

(2) Community support, as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(3) Community support does not include payment for room or board.

(4) Community support may not be provided to the individual at the same time that any of the following services are [is] provided:

(A) respite;

(B) day habilitation;

(C) employment assistance with the individual present;

or

(D) supported employment with the individual present.

(b) Day habilitation assists an individual to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to live successfully in the community and participate in home and community life.

(1) Day habilitation provides:

(A) individualized activities consistent with achieving the outcomes identified in the individual's PDP;

(B) activities necessary to reinforce therapeutic outcomes targeted by other waiver services, school, or other support providers;

(C) services in a group setting other than the individual's home for normally up to five days a week, six hours per day;

(D) personal assistance for an individual who cannot manage personal care needs during the day habilitation activity;

(E) as determined by an assessment conducted by an RN, assistance with medications and the performance of tasks dele-

gated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(F) transportation during the day habilitation activity necessary for the individual's participation in day habilitation activities.

(2) Day habilitation may not be provided at the same time that any of the following services are [is] provided:

(A) respite;

(B) community support;

(C) employment assistance with the individual present;

or

(D) supported employment with the individual present.

(c) Nursing provides treatment and monitoring of health care procedures ordered or prescribed by a practitioner and as required by standards of professional practice or state law to be performed by an RN or LVN. Nursing includes:

(1) administering medication;

(2) monitoring an individual's use of medications;

(3) monitoring an individual's health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified in a nursing assessment;

(4) assisting an individual or LAR to secure emergency medical services for the individual;

(5) making referrals for appropriate medical services;

(6) performing health care procedures as ordered or prescribed by a practitioner and required by standards of professional practice or law to be performed by an RN or LVN;

(7) delegating nursing tasks assigned to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;

(8) teaching an unlicensed service provider about the specific health needs of an individual;

(9) performing an assessment of an individual's health condition;

(10) an RN doing the following:

(A) performing a nursing assessment for each individual:

(i) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(ii) as determined necessary by an RN, including if the individual's health needs change;

(B) documenting information from performance of a nursing assessment;

(C) if an individual is receiving a service through CDS, providing a copy of the documentation described in described in subparagraph (B) of this paragraph to the individual's service coordinator;

(D) developing the nursing service portion of an individual's implementation plan required by §9.578(c)(2) of this subchapter (relating to Program Provider Certification Principles: Service De-

livery), which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(E) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider;

(11) in accordance with Texas Human Resources Code, Chapter 161:

(A) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(i) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(ii) the medication is:

(I) an oral medication;

(II) a topical medication; or

(III) a metered dose inhaler;

(iii) the medication is administered to the individual for a predictable or stable condition; and

(iv) the unlicensed service provider has been:

(I) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

(II) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

(B) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition.

(d) Employment assistance:

(1) is assistance provided to an individual to help the individual locate competitive employment in the community;

(2) consists of a service provider performing the following activities:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(D) transporting the individual to help the individual locate competitive employment in the community; and

(E) participating in service planning team meetings;

(3) is not provided to an individual with the individual present at the same time that respite, community support, day habilitation, or supported employment is provided;

(4) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual;

or

(ii) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in employment assistance activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business; and

(5) as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(e) Supported employment:

(1) is assistance provided to an individual:

(A) who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed; and

(B) in order for the individual to sustain competitive employment;

(2) consists of a service provider performing the following activities:

(A) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(B) transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(C) participating in service planning team meetings;

(3) is not provided to an individual with the individual present at the same time that respite, community support, day habilitation, or employment assistance is provided;

(4) does not include sheltered work or other similar types of vocational services furnished in specialized facilities, or using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual;

or

(ii) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in supported employment activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business; and

(5) as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physi-

cian has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(f) Behavioral support provides specialized interventions that assist an individual to increase adaptive behaviors to replace or modify ~~challenging~~ [maladaptive] or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life. Behavioral support includes:

(1) assessment and analysis of assessment findings of the behavior(s) to be targeted necessary to design an appropriate behavioral support plan;

(2) development of an individualized behavioral support plan consistent with the outcomes identified in the individual's PDP;

(3) training of and consultation with the LAR, family members, or other support providers and, as appropriate, with the individual in the purpose/objectives, methods and documentation of the implementation of the behavioral support plan or revisions of the plan;

(4) monitoring and evaluation of the success of the behavioral support plan implementation; and

(5) modification, as necessary, of the behavioral support plan based on documented outcomes of the plan's implementation.

(g) Adaptive aids enable an individual to increase mobility, the ability to perform activities of daily living, or the ability to perceive, control, or communicate with the environment in which the individual lives. Adaptive aids include devices, controls, appliances, or supplies and the repair or maintenance of such aids, if not covered by warranty, as specified in the *TxHmL Program Billing Guidelines*.

(1) Adaptive aids are provided to address specific needs identified in an individual's PDP and are limited to:

- (A) lifts;
- (B) mobility aids;
- (C) positioning devices;
- (D) control switches/pneumatic switches and devices;
- (E) environmental control units;
- (F) medically necessary supplies;
- (G) communication aids;
- (H) adapted/modified equipment for activities of daily living; and
- (I) safety restraints and safety devices.

(2) Adaptive aids may be provided up to a maximum of \$10,000 per individual per IPC year.

(3) Adaptive aids do not include items or supplies that are not of direct medical or remedial benefit to the individual or that are available to the individual through the Medicaid State Plan, through other governmental programs, or through private insurance.

(h) Minor home modifications are physical adaptations to the individual's home that are necessary to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence in the home and the repair or maintenance of such adaptations, if not covered by warranty.

(1) Minor home modifications may be provided up to a lifetime limit of \$7,500 per individual. After the \$7,500 lifetime limit has been reached, an individual is eligible for an additional \$300 per IPC year for additional modifications or maintenance of home modifications.

(2) Minor home modifications do not include adaptations or improvements to the home that are of general utility, are not of direct medical or remedial benefit to the individual, or add to the total square footage of the home.

(3) Minor home modifications are limited to:

- (A) purchase and repair of mobility/wheelchair ramps;
- (B) modifications to bathroom facilities;
- (C) modifications to kitchen facilities; and
- (D) specialized accessibility and safety adaptations.

(i) Dental treatment may be provided up to a maximum of \$1,000 per individual per IPC year for the following treatments:

- (1) emergency dental treatment;
- (2) preventive dental treatment;
- (3) therapeutic dental treatment; and
- (4) orthodontic dental treatment, excluding cosmetic orthodontia.

(j) Respite is provided for the [planned or emergency short-term] relief of an [the] unpaid caregiver of an individual when the caregiver is temporarily unavailable to provide supports [due to non-routine circumstances].

(1) Respite includes:

- (A) assistance with activities of daily living and functional living tasks;
- (B) assistance with planning and preparing meals;
- (C) transportation or assistance in securing transportation;
- (D) assistance with ambulation and mobility;

(E) as determined by an assessment conducted by an RN, assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(F) habilitation and support that facilitate:

(i) an individual's inclusion in community activities, use of natural supports and typical community services available to all people;

(ii) an individual's social interaction and participation in leisure activities; and

(iii) development of socially valued behaviors and daily living and independent living skills.

(2) Reimbursement for respite provided in a setting other than the individual's residence includes payment for room and board.

(3) Respite may be provided in the individual's residence or, if certification principles stated in §9.578(p) of this subchapter are met, in other locations.

(k) Professional therapies provide assessment and treatment by a licensed professional who meets the qualifications specified in §9.579 of this subchapter (relating to Certification Principles: Qualified Personnel) and include training and consultation with an individual's LAR, family members or other support providers. Professional therapies available under the TxHmL Program are:

- (1) audiology services;



- (2) speech/language pathology services;
- (3) occupational therapy services;
- (4) physical therapy services;
- (5) dietary services;
- (6) social work services; and
- (7) behavioral support.

(l) FMS are provided if the individual participates in the CDS option.

(m) Support consultation is provided at the request of the individual or LAR if the individual participates in the CDS option.

*§9.556. Eligibility Criteria for TxHmL Program Services.*

~~[(a)]~~ An applicant or individual is eligible for ~~[the]~~ TxHmL Program ~~services~~ if:

(1) the applicant or individual meets the financial eligibility criteria as described in Appendix B of the TxHmL waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) [defined in subsection (b) of this section];

(2) the applicant or individual meets one of the following criteria:

(A) based on a determination of an intellectual disability performed in accordance with THSC [Texas Health and Safety Code], Chapter 593, Subchapter A and as determined by DADS in accordance with §9.560 of this subchapter (relating to Level of Care (LOC) Determination), qualifies for an ICF/IID LOC I as defined in §9.238 of this chapter (relating to Level of Care I Criteria); or

(B) meets the following criteria:

(i) based on a determination of an intellectual disability performed in accordance with THSC [Texas Health and Safety Code], Chapter 593, Subchapter A and as determined by DADS in accordance with §9.560 of this subchapter, qualifies for one of the following levels of care:

(I) an ICF/IID LOC I as defined in §9.238 of this chapter; or

(II) an ICF/IID LOC VIII as defined in §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria);

(ii) meets one of the following:

(I) resides in a nursing facility immediately prior to enrolling in the TxHmL Program; or

(II) is at imminent risk of entering a nursing facility as determined by DADS; and

(iii) is offered ~~[a]~~ TxHmL Program ~~services~~ ~~[vacaney]~~ designated for a member of the reserved [reserve] capacity group "Individuals with a level of care I or VIII residing in a nursing facility" included in Appendix B of the TxHmL Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us);

(3) the applicant or individual has been assigned an LON 1, 5, 8, or 6 in accordance with §9.562 of this subchapter (relating to Level of Need (LON) Assignment);

(4) the applicant or individual has an IPC cost that does not exceed \$17,000 [approved in accordance with §9.558 of this subchapter (relating to Individual Plan of Care (IPC))];

(5) the applicant or individual is not enrolled in another waiver program and is not receiving a mutually excluded service iden-

tified in the Mutually Exclusive Services table in Appendix I of the HCS Handbook available at [www.dads.state.tx.us](http://www.dads.state.tx.us) [under §1915(e) of the Social Security Act];

(6) the applicant or individual has chosen, or the applicant's or individual's LAR has chosen, participation in the TxHmL Program over participation in the ICF/IID Program;

(7) the applicant's or individual's service planning team concurs that the TxHmL Program services and, if applicable, non-TxHmL Program services for which the applicant or individual may be eligible are sufficient to ensure the applicant's or individual's health and welfare in the community; and

(8) the applicant or individual lives in the applicant's or individual's own home or family home.

~~[(b)]~~ An applicant or individual is financially eligible for the TxHmL Program if the applicant or individual:

~~[(1)]~~ is categorically eligible for Supplemental Security Income (SSI) benefits;]

~~[(2)]~~ has once been eligible for and received SSI benefits and continues to be eligible for Medicaid as a result of protective coverage mandated by federal law;]

~~[(3)]~~ is under 20 years of age and;]

~~[(A)]~~ is financially the responsibility of DFPS in whole or in part; and]

~~[(B)]~~ is being cared for in a foster home or group home;]

~~[(i)]~~ that is licensed or certified and supervised by DFPS or a licensed public or private nonprofit child placing agency; and]

~~[(ii)]~~ in which a foster parent is the primary caregiver residing in the home;]

~~[(4)]~~ is currently receiving Medicaid for Youth Transitioning Out of Foster Care (Transitional Medicaid) because the applicant or individual formerly received foster care through DFPS and was under the financial responsibility of DFPS; or]

~~[(5)]~~ is a member of a family who receives full Medicaid benefits as a result of qualifying for Temporary Assistance for Needy Families;]

*§9.558. Individual Plan of Care (IPC).*

(a) An ~~[initial]~~ IPC must be developed for each applicant in accordance with §9.567 of this subchapter (relating to Process for Enrollment) and reviewed and revised for each individual whenever the individual's needs for services and supports change, but no less than annually, in accordance with §9.568 of this subchapter (relating to Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals).

(b) An IPC must be based on the PDP and ~~[The IPC must]~~ specify the type and amount of each TxHmL Program service to be provided to the individual, as well as non-TxHmL Program services and supports to be provided ~~[by other non-TxHmL Program sources]~~ during the IPC year. The type and amount of each TxHmL Program service in the IPC must be supported by:

(1) documentation that non-TxHmL Program sources for the service are unavailable and the service supplements rather than replaces natural supports or non-TxHmL Program services;

(2) assessments of the individual that identify specific services necessary for the individual to continue living in the community,

to ensure the individual's health and welfare in the community, and to prevent the individual's admission to institutional services; and

(3) documentation of the deliberations and conclusions of the service planning team that the TxHmL Program services are necessary for the individual to live in the community; are necessary to prevent the individual's admission to institutional services, and are sufficient, when combined with services or supports available from non-TxHmL Program sources (if applicable), to ensure the individual's health and welfare in the community.

(c) Before electronic transmission to DADS, an individual's IPC must be signed and dated by the required service planning team members indicating concurrence that the services recommended in the IPC meet the requirements of subsection (b) of this section.

(d) DADS reviews an electronically transmitted initial, revised, or renewal IPC and approves, modifies, or does not approve the IPC. ~~[DADS does not approve an IPC having a total cost that exceeds the combined cost limit specified in Appendix C of the TxHmL Program waiver application approved by CMS.]~~

(e) An electronically transmitted IPC must contain information identical to the information contained on the signed copy of the IPC described in subsection (c) of this section.

(f) DADS may review an IPC at any time to determine if the type and amount of each service specified in the IPC are appropriate. The service coordinator must submit documentation supporting the IPC to DADS in accordance with a request from DADS for documentation.

#### §9.560. Level of Care (LOC) Determination.

(a) A LIDDA [~~local authority~~] must request an LOC determination for an applicant or individual by electronically transmitting a completed ID/RC Assessment to DADS, indicating the recommended LOC. The electronically transmitted ID/RC Assessment must contain information identical to that on the signed ID/RC Assessment.

(b) DADS makes an LOC determination in accordance with §9.237(c) of this chapter (relating to Level of Care).

(c) Information on the ID/RC Assessment must be supported by current data obtained from standardized evaluations and formal assessments that measure physical, emotional, social, and cognitive factors.

(d) The LIDDA [~~local authority~~] must maintain the signed ID/RC Assessment and documentation supporting the recommended LOC in the applicant's or individual's record.

(e) DADS approves and enters the appropriate LOC into the automated billing and enrollment system or sends written notification to the service coordinator that an LOC has been denied.

(f) An LOC determination is valid for 364 calendar days after the LOC effective date determined by DADS.

#### §9.561. Lapsed Level of Care (LOC).

(a) To reinstate authorization for payment for days when services were delivered to an individual without a current LOC determination, a LIDDA [~~local authority~~] must:

(1) electronically transmit to DADS an ID/RC Assessment that is signed and dated by the service coordinator; ~~[for each period of time for which there was a lapsed LOC according to DADS procedures.]~~

(2) include on the ID/RC Assessment an end date of the LOC period that is not later than 365 calendar days after the end date of the previously authorized LOC period; and

(3) ensure that the electronically transmitted ID/RC Assessment contains information that is identical to the information on the signed and dated ID/RC Assessment.

(b) DADS notifies the LIDDA of its decision to grant or deny the request for reinstatement of an LOC determination within 45 calendar days after DADS receives the ID/RC Assessment in accordance with subsection (a) of this section.

(c) ~~[(b)]~~ The LIDDA [~~local authority~~] must maintain in the individual's record:

(1) a copy of the individual's most recent ID/RC Assessment approved by DADS; and

(2) an ID/RC Assessment identical to that electronically transmitted in accordance with subsection (a) of this section for each period of time for which there was a lapsed LOC.

(d) ~~[(e)]~~ DADS does not grant a request for reinstatement of an LOC determination:

(1) to establish program eligibility;

(2) to renew an LOC determination;

(3) to obtain an LOC determination for a period of time for which an LOC has been denied;

(4) to revise an LON; or

(5) for a period of time for which an individual's IPC is or was not current.

#### §9.562. Level of Need (LON) Assignment.

(a) A LIDDA [~~local authority~~] must request DADS to assign an LON for an applicant or individual by electronically transmitting a completed ID/RC Assessment to DADS, indicating the recommended LON and, as appropriate, submitting supporting documentation in accordance with §9.563(b) and (c) of this subchapter (relating to DADS Review of Level of Need (LON)).

(b) A LIDDA [~~The local authority~~] must maintain the applicant's or individual's Inventory for Client and Agency Planning (ICAP) Assessment Booklet supporting the recommended LON in the applicant's or individual's record and other documentation supporting the requested LON, including:

(1) the individual's PDP, including the deliberations and conclusions of the applicant's or individual's service planning team;

(2) assessments and interventions by qualified professionals; and

(3) behavioral intervention plans.

(c) If an LON 9 is recommended, a LIDDA [~~the local authority~~] must maintain documentation that proves:

(1) the applicant or individual exhibits extremely dangerous behavior that could be life threatening to the applicant or individual or to others;

(2) a written behavior intervention plan has been implemented that meets DADS guidelines and is based on ongoing written data, targets the extremely dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the extremely dangerous behavior occurs;

(3) management of the applicant's or individual's behavior requires a person to exclusively and constantly supervise the individual during the individual's waking hours, which must be at least 16 hours per day;

(4) the person supervising the individual has no other duties or activities during the period of supervision; and

(5) the individual's ID/RC Assessment is correctly scored with a "2" in the Behavior section.

(d) DADS assigns an LON for an individual based on the individual's ICAP service level score, information reported on the individual's ID/RC Assessment, and required supporting documentation.

(e) A LIDDA [local authority] must submit documentation supporting a recommended LON to DADS in accordance with DADS instructions regarding LON packet submission found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(f) DADS assigns one of five LONs in accordance with §9.161 of this chapter (relating to Level of Need Assignment).

*§9.563. DADS Review of Level of Need (LON).*

(a) DADS may review a recommended or assigned LON at any time to determine if it is appropriate. If DADS reviews an LON, documentation supporting the LON must be submitted by the LIDDA [local authority] to DADS in accordance with DADS request. Based on its review, DADS may modify an LON.

(b) If an LON 9 is requested, DADS may review documentation supporting the requested LON.

(c) Documentation supporting a recommended LON described in subsection (b) of this section must be submitted by the LIDDA [local authority] to DADS in accordance with this subchapter and received by DADS within seven calendar days after the LIDDA [local authority] has electronically transmitted the recommended LON.

(d) Within 21 calendar days after receiving the supporting documentation, DADS:

(1) requests additional documentation;

(2) electronically approves the recommended LON and establishes the effective date; or

(3) sends written notification that the recommended LON has been denied.

(e) DADS reviews any additional documentation submitted in accordance with DADS request and electronically approves the recommended LON or sends written notification to the LIDDA [local authority] that the recommended LON has been denied.

*§9.566. TxHmL Interest List.*

(a) A LIDDA must maintain an up-to-date interest list of applicants interested in receiving TxHmL Program services for whom the LIDDA is the applicant's designated LIDDA in DADS data system.

(b) A person may request that an applicant's name be added to the TxHmL interest list by contacting the LIDDA serving the Texas county in which the applicant or person resides.

(c) If a request is made in accordance with subsection (b) of this section, a LIDDA must add an applicant's name to the TxHmL interest list:

(1) if the applicant resides in Texas; and

(2) with an interest list request date of the date the request is received.

(d) For an applicant determined diagnostically or functionally ineligible for another DADS waiver program, DADS adds the applicant's name to the TxHmL interest list with a request date based on one of the following, whichever is earlier:

(1) the request date of the interest list for the other waiver program; or

(2) an existing request date for the TxHmL Program for the applicant.

(e) DADS or the LIDDA removes an applicant's name from the TxHmL interest list if:

(1) the applicant or LAR requests in writing that the applicant's name be removed from the interest list;

(2) the applicant moves out of Texas, unless the applicant is a military family member living outside of Texas for less than one year after the military member's active duty ends;

(3) the applicant declines the offer of TxHmL Program services or, as described in §9.567(f) of this subchapter (relating to Process for Enrollment), an offer of TxHmL Program services is withdrawn, unless the applicant is a military family member living outside of Texas for less than one year after the military member's active duty ends;

(4) the applicant is a military family member living outside of Texas for more than one year after the military member's active duty ends;

(5) the applicant is deceased; or

(6) DADS has denied the applicant enrollment in the TxHmL Program and the applicant or LAR has had an opportunity to exercise the applicant's right to appeal the decision in accordance with §9.571 of this subchapter (relating to Fair Hearings) and did not appeal the decision, or appealed and did not prevail.

(f) If DADS or the LIDDA removes an applicant's name from the TxHmL interest list in accordance with subsection (e)(1) - (4) of this section and, within 90 days after the name was removed, the LIDDA receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) reinstates the applicant's name to the interest list based on the original request date described in subsection (c) or (d) of this section; and

(2) notifies the applicant or LAR in writing that the applicant's name has been reinstated to the interest list in accordance with paragraph (1) of this subsection.

(g) If DADS or the LIDDA removes an applicant's name from the TxHmL interest list in accordance with subsection (e)(1) - (4) of this section and, more than 90 days after the name was removed, the LIDDA receives an oral or written request from a person to reinstate the applicant's name on the interest list:

(1) the LIDDA must add the applicant's name to the interest list based on the date the LIDDA receives the oral or written request; and

(2) DADS notifies the applicant or LAR in writing that the applicant's name has been added to the interest list in accordance with paragraph (1) of this subsection.

(h) If DADS or the LIDDA removes an applicant's name from the TxHmL interest list in accordance with subsection (e)(6) of this section and the LIDDA subsequently receives an oral or written request from a person to reinstate the applicant's name on the interest list:

(1) the LIDDA must add the applicant's name to the interest list based on the date the LIDDA receives the oral or written request; and

(2) DADS notifies the applicant or LAR in writing that the applicant's name has been added to the interest list in accordance with paragraph (1) of this subsection.

§9.567. Process for Enrollment.

(a) DADS notifies a LIDDA, in writing, of the availability of TxHmL Program services in the LIDDA's local service area and directs the LIDDA to offer TxHmL Program services to the applicant:

(1) whose interest list request date, assigned in accordance with §9.566(c)(2) or (d) of this subchapter (relating to TxHmL Interest List), is earliest on the statewide interest list for the TxHmL Program as maintained by DADS;

(2) whose name is not coded in the DADS data system as having been determined ineligible for the TxHmL Program and who is receiving services from the LIDDA that are funded by general revenue in an amount that would allow DADS to fund the services through the TxHmL Program; or

(3) who is a member of a target group identified in the approved TxHmL waiver application.

(b) Except as provided in subsection (c) of this section, the LIDDA must make the offer of TxHmL Program services in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) A LIDDA must make the offer of TxHmL Program services to an applicant described in subsection (a)(2) or (3) of this section in accordance with DADS procedures.

(d) The LIDDA must include in a written offer that is made in accordance with subsection (a)(1) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of TxHmL Program services within 30 calendar days after the LIDDA's written offer, the LIDDA withdraws the offer of TxHmL Program services; and

(B) if the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant or LAR declines the offer of TxHmL Program services, the LIDDA terminates those services that are similar to services provided under the TxHmL Program; and

(2) information regarding the time frame requirements described in subsection (f) of this section using the Deadline Notification form, which is available at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(e) If an applicant or LAR responds to an offer of TxHmL Program services, the LIDDA must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and a written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports using the Explanation of Services and Supports document which is available at [www.dads.state.tx.us](http://www.dads.state.tx.us); and

(2) give the applicant or LAR the Verification of Freedom of Choice form, which is available at [www.dads.state.tx.us](http://www.dads.state.tx.us) to document the applicant's choice regarding the TxHmL Program and ICF/IID Program.

(f) The LIDDA must withdraw an offer of TxHmL Program services made to an applicant or LAR if:

(1) within 30 calendar days after the LIDDA's offer made to the applicant or LAR in accordance with subsection (a)(1) of this section, the applicant or LAR does not respond to the offer of TxHmL Program services;

(2) within seven calendar days after the applicant or LAR receives the Verification of Freedom of Choice form from the LIDDA in accordance with subsection (e)(2) of this section, the applicant or LAR does not document the choice of TxHmL Program services over the ICF/IID Program using the Verification of Freedom of Choice form;

(3) within 30 calendar days after the applicant or LAR receives the contact information regarding all available program providers in the LIDDA's local service area in accordance with subsection (n)(1) of this section, the applicant or LAR does not document a choice of a program provider using the Documentation of Provider Choice form; or

(4) the applicant or LAR does not complete the necessary activities to finalize the enrollment process and DADS has approved the withdrawal of the offer.

(g) If the LIDDA withdraws an offer of TxHmL Program services made to an applicant, the LIDDA must notify the applicant or LAR of such action, in writing, by certified United States mail.

(h) If the applicant is currently receiving services from the LIDDA that are funded by general revenue and the applicant declines the offer of TxHmL Program services, the LIDDA must terminate those services that are similar to services provided under the TxHmL Program.

(i) If the LIDDA terminates an applicant's services in accordance with subsection (h) of this section, the LIDDA must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title (relating to Notification and Appeals Process).

(j) The LIDDA must retain in the applicant's record:

(1) the Verification of Freedom of Choice form documenting the applicant's or LAR's choice of services;

(2) the Documentation of Provider Choice form documenting the applicant's or LAR's choice of program provider; and

(3) any correspondence related to the offer of TxHmL Program services.

(k) [(a)] If an applicant or LAR chooses participation in the TxHmL Program, the LIDDA [local authority] must assign a service coordinator who develops, in conjunction with the service planning team, a PDP. At a minimum, the PDP must include the following:

(1) a description of the services and supports the applicant requires to continue living in the applicant's own home or family home;

(2) a description of the applicant's current existing natural supports and non-TxHmL Program services that will be available if the applicant is enrolled in the TxHmL Program;

(3) a description of individual outcomes to be achieved through TxHmL Program services and justification for each service to be included in the IPC;

(4) documentation that the type and amount of each service included in the applicant's IPC do not replace existing natural supports or non-TxHmL Program sources for the services for which the applicant may be eligible;

(5) documentation for each TxHmL program service of whether the service is critical to the individual's health and safety, as determined by the service planning team;

(6) a description of actions and methods to be used to reach identified service outcomes, projected completion dates, and person(s) responsible for completion;

(7) a statement that the applicant was provided the information regarding the CDS option as required by subsection ~~(1)(1)~~ of this section;

(8) if the applicant chooses to participate in the CDS option, a description of the services provided through the CDS option; and

(9) if the applicant chooses to participate in the CDS option, a description of the applicant's service backup plan.

~~(l)~~ The service coordinator must:

(1) in accordance with Chapter 41, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination):

(A) inform the applicant or LAR of the applicant's right to participate in the CDS option; and

(B) inform the applicant or LAR that the applicant or LAR may choose to have one or more services provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option); and

(2) if the applicant or LAR chooses to participate in the CDS option, comply with §9.583(s) of this subchapter (relating to TxHmL Program Principles for LIDDAs) [inform the applicant or LAR of the applicant's right to discontinue participation in the CDS option at any time].

~~(m)~~ The LIDDA must compile and maintain information necessary to process the applicant's or LAR's request for enrollment in the TxHmL Program.

(1) The LIDDA must complete an ID/RC Assessment.

(A) The LIDDA must:

(i) determine or validate a determination that the applicant has an intellectual disability in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions); or

(ii) verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions).

(B) The LIDDA must administer the Inventory for Client and Agency Planning (ICAP) or validate a current ICAP and recommend an LON assignment to DADS in accordance with §9.562 of this subchapter (relating to Level of Need (LON) Assignment).

(2) The LIDDA must develop a proposed IPC with the applicant or LAR based on the PDP and §9.555 of this subchapter (relating to Description of TxHmL Program Services).

~~(n)~~ If an applicant or LAR chooses to receive a TxHmL Program service provided by a program provider, the service coordinator must:

(1) provide names and contact information to the applicant or LAR regarding all program providers in the LIDDA's local service area;

(2) review the proposed IPC with potential program providers selected by the applicant or the LAR;

(3) arrange for meetings or visits with potential program providers as desired by the applicant or the LAR;

(4) ensure that the applicant's or LAR's choice of a program provider is documented, signed by the applicant or LAR, and retained by the LIDDA in the applicant's record;

(5) negotiate and finalize the proposed IPC with the selected program provider;

(6) ensure that the proposed IPC includes a sufficient number of RN nursing units for the program provider's RN to perform an initial nursing assessment, unless, as described in §9.578(r) of this subchapter (relating to Program Provider Certification Principles: Service Delivery):

(A) nursing services are not on the proposed IPC and the applicant or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(B) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(7) if an applicant or LAR refuses to include a sufficient number of RN nursing units on the proposed IPC for the program provider's RN to perform an initial nursing assessment as required by paragraph (6) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs community support, day habilitation, employment assistance, supported employment, or respite from the program provider, will result in the applicant not receiving the service unless, as described in §9.578(s) of this subchapter:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the proposed IPC for an initial assessment by the program provider's RN in the applicant's record.

~~(o)~~ After the selected program provider agrees to provide the services listed on the IPC, the LIDDA must submit enrollment information, including the completed ID/RC Assessment and the proposed IPC to DADS. DADS notifies the applicant or LAR, the selected program provider and FMSA, if applicable, and the LIDDA of its approval or denial of the applicant's program enrollment based on the eligibility criteria described in §9.556 of this subchapter (relating to Eligibility Criteria for TxHmL Program Services).

(p) [(f)] If a selected program provider initiates services before DADS notification of enrollment approval, the program provider may not be reimbursed in accordance with §9.573(a)(5)(M) of this subchapter (relating to Reimbursement).

§9.568. *Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals.*

(a) At least annually, and before the expiration of an individual's IPC, the service planning team and the program provider must review the PDP and IPC to determine whether individual outcomes and services previously identified remain relevant.

(1) The service coordinator, in collaboration with the service planning team, initiates revisions to the IPC in response to changes in the individual's needs and identified outcomes as documented in the current PDP.

(2) The service coordinator must electronically transmit annual renewals and necessary revisions of the IPC to DADS for approval and retain documentation as described in §9.567 of this subchapter (relating to Process for Enrollment) and §9.558 of this subchapter (relating to Individual Plan of Care (IPC)).

(b) The service coordinator must electronically transmit annual evaluations of LOC or revisions of LOC to DADS for approval in accordance with §9.560 of this subchapter (relating to Level of Care (LOC) Determination).

(c) A LIDDA [The local authority] must re-administer the ICAP to an individual in accordance with paragraph (1) of this subsection and must electronically transmit an ID/RC Assessment to DADS recommending a revision of the individual's LON assignment if the ICAP results indicate a change of the individual's LON assignment may be appropriate.

(1) The ICAP must be re-administered three years after an individual's enrollment and every third year thereafter unless, before that date:

(A) changes in the individual's functional skills or behavior occur that are not expected to be of short duration or cyclical in nature; or

(B) the individual's skills and behavior are inconsistent with the individual's assigned LON.

(2) As appropriate, the service coordinator must submit supporting documentation to DADS in accordance with §9.563 of this subchapter (relating to DADS Review of Level of Need (LON)).

(3) A LIDDA [The local authority] must retain in the individual's record results and recommendations of individualized assessments and other pertinent records documenting the recommended LON assignment.

§9.570. *Termination and Suspension of TxHmL Program Services.*

(a) DADS may terminate an individual's TxHmL Program services if:

(1) the individual no longer meets the eligibility criteria specified in §9.556 of this subchapter (relating to Eligibility Criteria for TxHmL Program Services);

(2) the individual or LAR requests that TxHmL Program services be terminated; or

(3) the individual or LAR refuses to cooperate in the provision or planning of services and:

(A) the refusal is documented by the program provider and the service coordinator; and

(B) the service coordinator has explained to the individual or LAR, in writing, that the refusal may result in termination of TxHmL Program services.

(b) DADS proposed termination of an individual's TxHmL Program services may be based on a LIDDA's recommendation [local authority's request] as described in subsection (c) of this section.

(c) To recommend [request] that DADS terminate an individual's TxHmL Program services, the individual's service coordinator must, within 14 calendar days after determining that one of the reasons in subsection (a) of this section exists, submit a written recommendation [request] containing the following information to DADS and provide a copy of the recommendation [request] to the individual or LAR:

(1) the reason termination is recommended [requested];

(2) a plan documenting [; as appropriate]:

(A) that, before submission of a recommendation [the request] for termination, the individual or LAR was informed of:

(i) the consequences of termination, including the ability of the individual to receive TxHmL Program services in the future; and

(ii) the individual's option to transfer to another program provider if the recommendation is based on a reason other than the individual's eligibility [and the consequences of termination, including the ability of the individual to receive TxHmL Program services in the future]; and

(B) the individual or LAR was informed of the potential service resources to use following termination of the individual's TxHmL Program services; and

(3) if termination is recommended for the reason stated in subsection (a)(3) of this section:

(A) a description of the action by the individual or LAR demonstrating refusal to cooperate in the provision or planning of services and the effect of such action on the planning or provision of services;

(B) a description of the attempts by the program provider and service coordinator, including face-to-face meetings between the service coordinator and individual or LAR, to resolve the circumstances causing the individual's or LAR's refusal to cooperate; and

(C) a copy of a written explanation sent by the service coordinator to the individual or LAR explaining the consequences of the individual's or LAR's refusal to cooperate.

(d) If DADS proposes termination of an individual's TxHmL Program services, DADS sends a written notice of the proposed termination and the right to request a fair hearing required by §9.571 of this subchapter (relating to Fair Hearings) to the individual or LAR, the program provider, and the LIDDA [local authority].

(e) If the reason for the proposed termination is that the individual no longer meets the eligibility criteria described in §9.556(4) and (7) [§9.556(a)(4) and (7)] of this subchapter, the service coordinator must, at DADS request:

(1) inform the individual or LAR that DADS, based on availability, offers the individual a program vacancy in the HCS Program in accordance with §9.158(a)(3) of this chapter (relating to Process for Enrollment of Applicants); and

(2) offer to assist the individual or LAR to apply for other services for which the individual may be eligible including other home and community-based service programs and ICF/IID Program services.

(f) If an individual is temporarily admitted to one of the following settings, DADS suspends TxHmL Program services during that admission:

- (1) a hospital;
- (2) an ICF/IID [~~licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS~~];
- (3) a nursing facility [~~licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242~~];
- (4) a residential child-care operation licensed or subject to being licensed by DFPS;
- (5) a facility licensed or subject to being licensed by the Department of State Health Services;
- (6) a facility operated by the Department of Assistive and Rehabilitative Services; ~~or~~
- (7) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; ~~or~~ [-]
- (8) an assisted living facility licensed or subject to being licensed in accordance with THSC, Chapter 247.

*§9.573. Reimbursement.*

(a) Program provider reimbursement.

(1) DADS pays a ~~the~~ program provider for services as described in this paragraph. [-]

(A) DADS pays for community [~~Community~~] support, nursing, respite, day habilitation, employment assistance, supported employment, behavioral support, and professional therapies ~~are paid for~~ in accordance with the reimbursement rate for the specific service.

(B) DADS pays for adaptive [~~Adaptive~~] aids, minor home modifications, and dental treatment ~~are paid for~~ based on the actual cost of the item or service and, if requested, a [an allowed] requisition fee in accordance with the TxHmL Program Billing Guidelines, which are available at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(2) To be paid for the provision of a service, a program provider must submit a service claim that meets the requirements in §49.311 of this title (relating to Claims Payment) and the *TxHmL Program Billing Guidelines*.

(3) If an individual's TxHmL Program services are suspended or terminated, the program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination except the program provider may submit a claim for a service provided on the first calendar day of the suspension or termination.

(4) If the program provider submits a claim for an adaptive aid that costs \$500 or more or for a minor home modification that costs \$1,000 or more, the claim must be supported by a written assessment from a licensed professional specified by DADS in the *TxHmL Program Billing Guidelines* and other documentation as required by the *TxHmL Program Billing Guidelines*.

(5) DADS does not pay the program provider for a service or recoups any payments made to the program provider for a service if:

(A) the individual receiving the service was, at the time the service was provided, ineligible for the TxHmL Program or Med-

icaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;

(B) the service was not included on the signed and dated IPC of the individual in effect at the time the service was provided;

(C) the service [~~e provided did not meet the service definition as described in §9.555 of this subchapter (relating to Description Definitions of TxHmL Program Services) or~~] was not provided in accordance with the *TxHmL Program Billing Guidelines*;

(D) the service was not documented in accordance with the *TxHmL Program Billing Guidelines*;

(E) the claim for the service was not prepared and submitted in accordance with the *TxHmL Program Billing Guidelines*;

(F) the program provider does not have the documentation described in paragraph (4);

(G) before including employment assistance on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(H) before including supported employment on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(I) DADS determines that the service would have been paid for by a source other than the TxHmL Program;

(J) the service was provided by a service provider who did not meet the qualifications to provide the service as described in the *TxHmL Program Billing Guidelines*;

(K) the service was not provided in accordance with a signed and dated IPC meeting the requirements set forth in §9.558 of this subchapter (relating to Individual Plan of Care (IPC));

(L) the service was not provided in accordance with the PDP or [~~and~~] the implementation plan;

(M) the service was provided before the individual's enrollment date into the TxHmL Program; or

(N) the service was not provided.

(6) The program provider must refund to DADS any overpayment made to the program provider within 60 days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from DADS, whichever is earlier.

(7) Payments by DADS to a program provider are not withheld in the event the LIDDA [~~local authority~~] erroneously fails to electronically transmit a renewal of an enrolled individual's LOC or IPC and the program provider continues to provide services in accordance with the most recent IPC ~~as~~ approved by DADS.

(b) Billing and payment reviews.

(1) DADS conducts billing and payment reviews to monitor a program provider's compliance with this subchapter and the *TxHmL Program Billing Guidelines*. DADS conducts such reviews in accordance with the *TxHmL Billing and Payment Review Protocol* set forth in the *TxHmL Program Billing Guidelines*. As a result of a billing and payment review, DADS may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with DADS instructions, a corrective action plan that improves the program provider's billing practices.

(2) A corrective action plan required by DADS in accordance with paragraph (1)(B) of this subsection must:

(A) include:

- (i) the reason the corrective action plan is required;
- (ii) the corrective action to be taken;
- (iii) the person responsible for taking each corrective action; and
- (iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to DADS within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by DADS before implementation.

(3) Within 30 calendar days after the corrective action plan is received by DADS, DADS notifies the program provider if the corrective action plan is approved or if changes to the plan are required.

(4) If DADS requires a program provider to develop and submit a corrective action plan in accordance with paragraph (1)(B) of this subsection and the program provider requests an administrative hearing for the recoupment in accordance with §9.575 of this chapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. DADS notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(5) If the program provider does not submit the corrective action plan or complete the required corrective action within the time frames described in paragraph (2) of this subsection, DADS may impose a vendor hold on payments due to the program provider under the contract until the program provider takes the corrective action.

(6) If the program provider does not submit the corrective action plan or complete the required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (5) of this subsection, DADS may terminate the contract.

#### §9.574. Record Retention.

(a) A program provider must comply with §49.307 of this title (relating to Record Retention and Disposition).

(b) A LIDDA [local authority] must retain original records described in this subchapter necessary to disclose the extent of the services provided to the individual and, on request, provide DADS, at no cost to DADS, any such records until the latest of the following occurs:

- (1) six years elapse from the date the records were created;
- (2) any audit exception or litigation involving the records is resolved; or
- (3) the individual becomes 21 years of age.

#### §9.577. Program Provider Compliance and Corrective Action.

(a) DADS takes action against a program provider as a result of a review as described in this section.

(b) If DADS determines after a certification review described in §9.576(b) of this subchapter (relating to DADS Review of a Program

Provider), that a program provider is in compliance with all certification principles, DADS certifies the program provider as described in §9.576(d) of this subchapter and no action by the program provider is required.

(c) DADS does not certify a program provider for a new certification period if DADS determines at a certification review, except for the initial certification review described in §9.576(c) of this subchapter, that:

(1) at the time of the certification review, the program provider is not providing TxHmL Program services to any individuals; and

(2) for the period beginning the first day of the current certification period through the 121st day before the end of the current certification period, the program provider did not provide TxHmL Program services for at least 60 consecutive calendar days.

(d) Except as provided in subsections (j) - (l) of this section, if DADS determines from a review that a program provider's failure to comply with one or more of the certification principles is not of a serious nature, DADS requires the program provider to submit a corrective action plan to DADS for approval within 14 calendar days after the date of DADS final review report.

(e) The corrective action plan required by subsection (d) of this section must specify a date by which corrective action will be completed and such date must be no later than 90 calendar days after the date of the review exit conference.

(f) Within 14 calendar days after the date DADS receives the corrective action plan required by subsection (d) of this section, DADS notifies the program provider of whether the plan is approved or not approved. If DADS approves the plan:

(1) DADS certifies the program provider; and

(2) the program provider must complete corrective action in accordance with the corrective action plan.

(g) If the program provider does not submit a corrective action plan as required by subsection (d) of this section, or DADS notifies the program provider that the plan is not approved, DADS may:

(1) request that the program provider submit a revised corrective action plan within a time period determined by DADS;

(2) impose a vendor hold against the program provider until the program provider submits a corrective action plan approved by DADS; or

(3) deny or terminate certification of the program provider.

(h) DADS determines whether the program provider completed the corrective action in accordance with the corrective action plan required by subsection (d) of this section during DADS first review of the program provider after the corrective action completion date.

(i) If DADS determines at the end of a review that a program provider's failure to comply with one or more of the certification principles results in a condition of a serious nature, DADS:

(1) requires the program provider to complete corrective action within 30 calendar days after the date of the review exit conference; and

(2) conducts a follow-up review after the 30-day period to determine if the program provider completed the corrective action.

(j) If DADS determines from a review that a hazard to the health or safety of one or more individuals exists, DADS requires the



program provider to remove the hazard by the end of the review. If the program provider does not remove the hazard by the end of the review, DADS:

(1) denies or terminates certification of the program provider; and

(2) coordinates with the LIDDAs [local authorities] the immediate provision of alternative services for the individuals.

(k) If DADS determines from a review that a program provider has falsified documentation used to demonstrate compliance with this subchapter, DADS may:

(1) impose a vendor hold against the program provider; or

(2) deny or terminate certification of the program provider.

(l) If after a review, DADS determines that a program provider remains out of compliance with a certification principle found out of compliance in the previous review, DADS:

(1) requires the program provider to, within 14 days after the review exit conference, or within another time period determined by DADS, submit evidence demonstrating its compliance with the certification principle;

(2) imposes or continues a vendor hold against the program provider; or

(3) denies or terminates certification of the program provider.

(m) If DADS imposes a vendor hold in accordance with this section:

(1) for a program provider with a provisional contract, DADS initiates termination of the program provider's contract in accordance with §49.534 of this title (relating to Termination of Contract by DADS); or

(2) for a program provider with a standard contract, DADS conducts a follow-up review to determine if the program provider completed the corrective action required to release the vendor hold; and

(A) if the program provider completed the corrective action, DADS releases the vendor hold; or

(B) if the program provider has not completed the corrective action, DADS takes action as described in subsection (l) of this section.

(n) If DADS determines that a program provider is out of compliance with §9.579(s) or (t) of this subchapter (relating to Certification Principles: Qualified Personnel), corrective action required by DADS may include the program provider paying or ensuring payment to a service provider of community support who was not paid the wages required by §9.579(s) of this subchapter, the difference between the amount required and the amount paid to the service provider.

§9.578. *Program Provider Certification Principles: Service Delivery.*

(a) A program provider must serve an eligible applicant or individual who selects the program provider unless the program provider's enrollment has reached its service capacity as identified in the DADS data system.

(b) The program provider must maintain a separate record for each individual enrolled with the provider. The individual's record must include:

(1) a copy of the individual's current PDP as provided by the LIDDA [local authority];

(2) a copy of the individual's current IPC as provided by the LIDDA [local authority]; and

(3) a copy of the individual's current ID/RC Assessment as provided by the LIDDA [local authority].

(c) The program provider must:

(1) participate as a member of the service planning team, if requested by the individual or LAR; and

(2) develop, in conjunction with the individual, the individual's family or LAR a written implementation plan.

(d) The program provider must ensure that service provision is accomplished in accordance with the individual's PDP and the implementation plan described in subsection (c)(2) of this section.

(e) The program provider must ensure that services and supports provided to an individual assist the individual to achieve the outcomes identified in the PDP.

(f) The program provider must ensure that an individual's progress or lack of progress toward achieving the individual's identified outcomes is documented in observable, measurable terms that directly relate to the specific outcome addressed, and that such documentation is available for review by the service coordinator.

(g) The program provider must communicate to the individual's service coordinator changes needed to the individual's PDP or IPC as such changes are identified by the program provider or communicated to the program provider by the individual or LAR.

(h) The program provider must ensure that an individual who performs work for the program provider is paid at a wage level commensurate with that paid to a person without disabilities who would otherwise perform that work. The program provider must comply with local, state, and federal employment laws and regulations.

(i) The program provider must ensure that an individual provides no training, supervision, or care to another individual unless the individual is qualified and compensated in accordance with local, state, and federal regulations.

(j) The program provider must ensure that an individual who produces marketable goods and services during habilitation activities is paid at a wage level commensurate with that paid to a person without disabilities who would otherwise perform that work. Compensation must be paid in accordance with local, state, and federal regulations.

(k) The program provider must offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community.

(l) The program provider must offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary for the individual to participate in such activities consistent with the individual's or LAR's choice and the individual's PDP.

(m) The program provider must offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary for the individual to participate in such activities consistent with an individual's or LAR's choice and the individual's PDP.

(n) The program provider must provide all TxHmL Program services:

(1) authorized in an individual's IPC;

(2) in accordance with the applicable service definition as specified in §9.555 of this subchapter (relating to Description [Definitions] of TxHmL Program Services); and

(3) in accordance with an individual's PDP, the implementation plan, and Appendix C of the TxHmL Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(o) A program provider must develop a written service backup plan for a TxHmL Program service identified on the PDP as critical to meeting an individual's health and safety.

(1) A service backup plan must:

(A) contain the name of the service;

(B) specify the period of time in which an interruption to the service would result in an adverse effect to the individual's health or safety; and

(C) in the event of a service interruption resulting in an adverse effect as described in subparagraph (B) of this paragraph, describe the actions the program provider will take to ensure the individual's health and safety.

(2) A program provider must ensure that:

(A) if the action in the service backup plan required by paragraph (1) of this subsection identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety; and

(B) a person identified in the service backup plan, if paid to provide the service, meets the qualifications described in this subchapter.

(3) If a service backup plan is implemented, a program provider must:

(A) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

(B) document whether or not the plan was effective; and

(C) revise the plan if the program provider determines the plan was ineffective.

(p) If respite is provided in a location other than an individual's family home, the location must be acceptable to the individual or LAR and provide an accessible, safe, and comfortable environment for the individual that promotes the health and welfare of the individual.

(1) Respite may be provided in the residence of another individual receiving TxHmL Program services or similar services if the program provider has obtained written approval from the individuals living in the residence or their LARs and:

(A) no more than three individuals receiving TxHmL Program services and other persons receiving similar services are provided services at any one time; or

(B) no more than four individuals receiving TxHmL Program services and other persons receiving similar services are provided services in the residence at any one time and the residence is approved in accordance with §9.188 of this chapter (relating to DADS Approval of Residences).

(2) Respite may be provided in a respite facility if the program provider provides or intends to provide respite to more than three individuals receiving TxHmL Program services or persons receiving similar services at the same time; and

(A) the program provider has obtained written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances; and

(B) the program provider obtains such written approval from the local fire authority having jurisdiction on an annual basis.

(3) If respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association.

(4) Respite must not be provided in an institution such as an ICF/IID, [skilled] nursing facility, or hospital.

(q) The program provider must ensure that nursing is provided in accordance with:

(1) Texas Occupations Code, Chapter 301 (Nursing Practice Act);

(2) 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice);

(3) 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(4) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(r) A program provider may determine that an individual does not require a nursing assessment if:

(1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by the program provider's unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(2) a nursing task will be performed by the program provider's unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(s) If an individual or LAR refuses a nursing assessment described in §9.555(c)(10)(A) of this subchapter [~~relating to Definitions of TxHmL Program Services~~], the program provider must not:

(1) provide nursing services to the individual; or

(2) provide community support, day habilitation, employment assistance, supported employment, or respite to the individual unless:

(A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and

(B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

(t) If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (s) of this section, the program provider must:

(1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

(2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(u) If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.583(j)(6) [~~§9.583(k)(6)~~] of this subchapter (relating to TxHmL Program Principles for LIDDAs [Local Authorities]), the program provider must immediately send the written notification described in subsection (t) of this section to DADS.

(v) The program provider must, if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual.

(w) The program provider must:

(1) for an applicant 21 years of age or older residing in a nursing facility who is enrolling in the TxHmL Program:

(A) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator;

(B) assist in the implementation of the applicant's transition plan as described in the plan; and

(C) be physically present for the pre-move site review and assist the service coordinator during the review as requested; and

(2) for 180 days after an individual 21 years of age or older has enrolled in the TxHmL Program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility:

(A) be physically present for each post-move monitoring visit and assist the service coordinator during the visit as requested;

(B) assist in the implementation of the individual's transition plan as described in the plan;

(C) participate as a member of the service planning team, which includes attending service planning team meetings scheduled by the service coordinator; and

(D) within one calendar day after becoming aware of an event or condition that may put the individual at risk of admission or readmission to a nursing facility, notify the service planning team of the event or condition.

§9.579. *Certification Principles: Qualified Personnel.*

(a) The program provider must ensure the continuous availability of trained and qualified employees and contractors to provide the services in an individual's IPC.

(b) The program provider must comply with applicable laws and regulations to ensure that:

(1) its operations meet necessary requirements; and

(2) its employees or contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(c) The program provider must employ or contract with a service provider of the individual's or LAR's choice to provide a TxHmL Program service if that service provider:

(1) is qualified to provide the service;

(2) provides the service within the direct services portion of the applicable TxHmL Program rate; and

(3) contracts with or is employed by the program provider.

(d) The program provider must conduct initial and periodic training that ensures:

(1) staff members and service providers are trained and qualified to deliver services as required by the current needs and characteristics of the individual to whom they deliver services; and

(2) staff members, service providers, and volunteers comply with §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations).

(e) The program provider must implement and maintain personnel practices that safeguard an individual against infectious and communicable diseases.

(f) The program provider must prevent:

(1) conflicts of interest between program provider personnel and an individual;

(2) financial impropriety toward an individual;

(3) abuse, neglect, or exploitation of an individual; and

(4) threats of harm or danger toward an individual's possessions.

(g) The program provider must employ or contract with a person who oversees the provision of TxHmL Program services to an individual. The person must:

(1) have at least three years paid work experience in planning and providing TxHmL Program services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to TxHmL Program services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

(B) participation as a member of a microboard, as verified in writing by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(h) The program provider must ensure that a service provider of community support, day habilitation, or respite is at least 18 years of age and:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) written competency-based assessment of the ability to document service delivery and observations of an individual to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for an individual being served.

(i) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment: ~~[is at least 18 years of age; is not the LAR of the individual receiving employment assistance or supported employment from the service provider; and has:]~~

(1) ~~is at least 18 years of age;~~

(2) ~~is not:~~

(A) ~~the spouse [LAR] of the individual; or [receiving employment assistance or supported employment from the service provider; and has:]~~

(B) ~~a parent of the individual if the individual is a minor; and~~

(3) ~~has:~~

(A) ~~[(4)] a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;~~

(B) ~~[(2)] an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or~~

(C) ~~[(3)] a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.~~

(j) A program provider must ensure that the experience required by subsection (i) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(k) The program provider must ensure that a service provider who provides transportation:

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.

(l) The program provider must ensure that dental treatment is provided by a dentist licensed in accordance with Texas Occupations Code, Chapter 256.

(m) The program provider must ensure that nursing is provided by an RN or an LVN.

(n) The program provider must ensure that adaptive aids meet applicable standards of manufacture, design, and installation.

(o) The program provider must ensure that a service ~~[the]~~ provider of behavioral support ~~[is]~~:

(1) meets one of the following:

(A) ~~[(4)] is licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501;~~

(B) ~~[(2)] is licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501;~~

(C) ~~[(3)] is certified by DADS as described in §5.161 of this title (relating to Certified Authorized Provider [TDMHMR-Certified Psychologist]);~~

(D) ~~[(4)] is certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.;~~

(E) ~~[(5)] has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;~~

(F) ~~[(6)] is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505; or~~

(G) ~~[(7)] is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; and [-]~~

(2) completes training required by DADS as described in the HCS Handbook.

(p) The program provider must ensure that minor home modifications are delivered by contractors who provide the service in accordance with state and local building codes and other applicable regulations.

(q) The program provider must ensure that a provider of professional therapies is licensed for the specific therapeutic service provided as follows:

(1) for audiology services, an audiologist licensed in accordance with Texas Occupations Code, Chapter 401;

(2) for speech and language pathology services, a speech-language pathologist or licensed assistant in speech-language pathology licensed in accordance with Texas Occupations Code, Chapter 401;

(3) for occupational therapy services, an occupational therapist or occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454;

(4) for physical therapy services, a physical therapist or physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453;

(5) for dietary services, a licensed dietitian licensed in accordance with Texas Occupations Code, Chapter 701; and

(6) for social work services, a social worker licensed in accordance with Texas Occupations Code, Chapter 505.

(r) The program provider must comply with §49.304 of this title (relating to Background Checks).

(s) A program provider must comply with §49.312(a) of this title (relating to Personal Attendants).

(t) If the service provider of community support is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (s) of this section as if the contractor were the program provider.

§9.580. *Certification Principles: Quality Assurance.*

(a) The program provider must:

(1) assist the individual or LAR in understanding the requirements for participation in the TxHmL Program and include the individual or LAR in planning service provision and any changes to the plan for service provision if changes become necessary;

(2) assist and cooperate with the individual's or LAR's request to transfer to another program provider;

(3) assist the individual to access public accommodations or services available to all citizens;

(4) assist the individual to manage the individual's financial affairs upon documentation of the individual's or LAR's written request for such assistance;

(5) ensure that any restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

(6) inform the individual or LAR about the individual's health, mental condition, and related progress;

(7) inform the individual or LAR of the name and qualifications of any person serving the individual and the option to choose among various available service providers;

(8) provide the individual or LAR access to TxHmL Program records, including, if applicable, financial records maintained on the individual's behalf, about the individual and the delivery of services by the program provider to the individual;

(9) assist the individual to communicate by phone or by mail during the provision of TxHmL Program services unless the service planning team has agreed to limit the individual's access to communicating by phone or by mail;

(10) assist the individual, as specified in the individual's PDP, to attend religious activities as chosen by the individual or LAR;

(11) ensure the individual is free from unnecessary restraints during the provision of TxHmL Program services;

(12) regularly inform the individual or LAR about the individual's or program provider's progress or lack of progress made in the implementation of the PDP;

(13) receive and act on complaints about the TxHmL Program [program] services provided by the program provider;

(14) ensure that the individual is free from abuse, neglect, or exploitation by program provider personnel;

(15) provide active, individualized assistance to the individual or LAR in exercising the individual's rights and exercising self-advocacy, including:

- (A) making complaints;
- (B) registering to vote;
- (C) obtaining citizenship information and education;
- (D) obtaining advocacy services; and
- (E) obtaining information regarding legal guardianship;

(16) provide the individual privacy during treatment and care of personal needs;

(17) include the individual's LAR in decisions involving the planning and provision of TxHmL Program services;

(18) inform the individual or LAR of the process for reporting a complaint to DADS or the LIDDA [local authority] when the program provider's resolution of a complaint is unsatisfactory to the individual or LAR, including the DADS Office of Consumer Rights and Services telephone number to initiate complaints (1-800-458-9858) or the LIDDA [local authority] telephone number to initiate complaints;

(19) ensure the individual is free from seclusion;

(20) inform the individual or LAR, orally and in writing, of the requirements described in paragraphs (1) - (19) of this subsection:

(A) when the individual is enrolled in the program provider's program;

(B) if the requirements described in paragraphs (1) - (19) of this subsection are revised;

(C) at the request of the individual or LAR; and

(D) if the legal status of the individual changes;

(21) obtain an acknowledgement stating that the information described in paragraph (20) of this subsection was provided to the individual or LAR and that is signed by:

(A) the individual or LAR;

(B) the program provider staff person providing such information; and

(C) a third-party witness; and

(22) notify the individual's service coordinator of an individual's or LAR's expressed interest in the CDS option and document such notification.

(b) The program provider must make available all records, reports, and other information related to the delivery of TxHmL Program services as requested by DADS, other authorized agencies, or CMS and deliver such items, as requested, to a specified location.

(c) At least annually, the program provider must conduct a satisfaction survey of individuals, their families, and LARs, and take action regarding any areas of dissatisfaction.

(d) The program provider must comply with §49.309 of this title (relating to Complaint Process).

(e) The program provider must:

(1) ensure that the individual and the LAR are informed of how to report allegations of abuse, neglect, or exploitation to DFPS and are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing;

(2) comply with §49.310(4) of this title (relating to Abuse, Neglect, and Exploitation Allegations); and

(3) ensure that all staff members, service providers, and volunteers:

(A) are instructed to report to DFPS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited; and

(B) are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

(C) comply with §49.310(3)(B) of this title.

(f) Upon suspicion that an individual has been or is being abused, neglected, or exploited or notification of an allegation of abuse, neglect or exploitation, the program provider must take necessary actions to secure the safety of the individual, including:

(1) obtaining immediate and on-going medical and other appropriate supports for the individual, as necessary;

(2) restricting access by the alleged perpetrator of the abuse, neglect, or exploitation to the individual or other individuals pending investigation of the allegation, when an alleged perpetrator is an employee or contractor of the program provider; and

(3) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the individual, the individual's LAR, and the LIDDA [local authority] of the allegation report and the actions that have been or will be taken.

(g) The program provider must ensure that staff members, service providers, and volunteers cooperate with the DFPS investigation of an allegation of abuse, neglect, or exploitation, including:

(1) providing complete access to all TxHmL Program service sites owned, operated, or controlled by the program provider;

(2) providing complete access to individuals and program provider personnel;

(3) providing access to all records pertinent to the investigation of the allegation; and

(4) preserving and protecting any evidence related to the allegation in accordance with DFPS instructions.

(h) The program provider must:

(1) report the program provider's response to the finding of a DFPS investigation of abuse, neglect, or exploitation to DADS in accordance with DADS procedures within 14 calendar days of the program provider's receipt of the investigation findings;

(2) promptly, but not later than five calendar days from the program provider's receipt of the DFPS investigation finding, notify the individual and LAR of:

(A) the investigation finding;

(B) the corrective action taken by the program provider if DFPS confirms that abuse, neglect, or exploitation occurred;

(C) the process to appeal the investigation finding as described in Chapter 711, Subchapter M of this title (relating to Requesting an Appeal if You are the Reporter, Alleged Victim, Legal Guardian, or with Disability Rights Texas); and

(D) the process for requesting a copy of the investigative report from the program provider; and

(3) upon request of the individual or LAR, provide to the individual or LAR a copy of the DFPS investigative report after concealing any information that would reveal the identity of the reporter or of any individual who is not the individual.

(i) If the DFPS investigation confirms that abuse, neglect, or exploitation by program provider personnel occurred, the program provider must take appropriate action to prevent the recurrence of abuse, neglect or exploitation including, when warranted, disciplinary action against or termination of the employment of program provider personnel confirmed by the DFPS investigation to have committed abuse, neglect, or exploitation.

(j) In all respite facilities, the program provider must post in a conspicuous location:

(1) the name, address, and telephone number of the program provider;

(2) the effective date of the contract; and

(3) the name of the legal entity named on the contract.

(k) At least quarterly, the program provider must review incidents of abuse, neglect, or exploitation, complaints, temporary suspensions, terminations, transfers, and critical incidents to assess trends and identify program operation modifications that will prevent the recurrence of such incidents and improve service delivery.

(l) A program provider must ensure that all personal information maintained by the program provider or its contractors concerning an individual, such as lists of names, addresses, and records created or obtained by the program provider or its contractor, is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the TxHmL Program, and is otherwise neither directly nor indirectly used or disclosed unless the written permission of the individual to whom the information applies or the individual's LAR is obtained before the use or disclosure.

(m) The program provider must ensure that:

(1) the individual or LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds before the charges are assessed; and

(2) charges for items or services are reasonable and comparable to the costs of similar items and services generally available in the community.

(n) The program provider must not charge an individual or LAR for costs for items or services reimbursed through the TxHmL Program.

(o) At the written request of an individual or LAR, the program provider:

(1) must manage the individual's personal funds entrusted to the program provider;

(2) must not commingle the individual's personal funds with the program provider's funds; and

(3) must maintain a separate, detailed record of all deposits and expenditures for the individual.

(p) When a behavioral support plan includes techniques that involve restriction of individual rights or intrusive techniques, the program provider must ensure that the implementation of such techniques includes:

(1) approval by the individual's service planning team;

(2) written consent of the individual or LAR;

(3) verbal and written notification to the individual or LAR of the right to discontinue participation in the behavioral support plan at any time;

(4) assessment of the individual's needs and current level/severity of the behavior targeted by the plan;

(5) use of techniques appropriate to the level/severity of the behavior targeted by the plan;

(6) a written behavior support plan developed by a psychologist or behavior analyst with input from the individual, LAR, the individual's service planning team, and other professional personnel;

(7) collection and monitoring of behavioral data concerning the targeted behavior;

(8) allowance for the decrease in the use of intervention techniques based on behavioral data;

(9) allowance for revision of the behavioral support plan when the desired behavior is not displayed or techniques are not effective;

(10) consideration of the effects of the techniques in relation to the individual's physical and psychological well-being; and

(11) at least annual review by the individual's service planning team to determine the effectiveness of the program and the need to continue the techniques.

(q) The program provider must report the death of an individual to the LIDDA [local authority] and DADS by the end of the next business day following the death of the individual or the program provider's knowledge of the death and, if the program provider reasonably believes that the individual's LAR or family does not know of the individual's death, to the individual's LAR or family as soon as possible, but not later than 24 hours after the program provider learns of the individual's death.

(r) A program provider must enter critical incident data in the DADS data system no later than 30 calendar days after the last calendar day of the month being reported in accordance with the TxHmL Provider User Guide.

(s) The program provider must ensure that:

(1) the name and phone number of an alternate to the CEO of the program provider is entered in the DADS data system; and

(2) the alternate to the CEO:

(A) performs the duties of the CEO during the CEO's absence; and

(B) acts as the contact person in a DFPS investigation if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual and complies with subsections (f) - (i) of this section.

*§9.582. Compliance with TxHmL Program Principles for LIDDAs [Local Authorities].*

(a) A LIDDA [local authority participating in the TxHmL Program] must be in [continuous] compliance with: [the TxHmL Program Principles for Local Authorities as described in]

(1) Chapter 2, Subchapter L, of this title (relating to Service Coordination for Individuals with an Intellectual Disability);

(2) §9.583 of this subchapter (relating to TxHmL Program Principles for LIDDAs [Local Authorities]); and [-]

(3) other requirements for the LIDDA as described in this subchapter.

(b) DADS conducts a compliance review at least annually of each LIDDA [local authority] participating in the TxHmL Program.

(c) If any item of noncompliance remains uncorrected by the LIDDA [local authority] at the time of the review exit conference, the LIDDA [local authority] must, within 30 calendar days after the exit conference, submit to DADS a plan of correction with timelines to implement the plan after approval by DADS. DADS may take action as specified in the performance contract [between the local authority and DADS] if the LIDDA [local authority] fails to submit or implement an approved plan of correction.

*§9.583. TxHmL Program Principles for LIDDAs [Local Authorities].*

(a) A LIDDA [local authority] must notify an applicant of a TxHmL Program vacancy in accordance with §9.567 [§9.566] of this subchapter (relating to Process for Enrollment [Notification of Applicants]).

(b) A LIDDA [local authority] must process requests for enrollment in the TxHmL Program in accordance with §9.567 of this subchapter (relating to Process for Enrollment).

(c) A LIDDA [local authority] must have a mechanism to ensure objectivity in the process to assist an individual or LAR in the selection of a program provider and a system for training all LIDDA [local authority] staff who may assist an individual or LAR in such process.

[(d) A LIDDA must ensure that its employees and contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.]

(d) [(e)] A LIDDA [local authority] must ensure that an individual or LAR is informed orally and in writing of the following processes for filing complaints [about service provision]:

(1) processes for filing complaints with the LIDDA [local authority] about the provision of service coordination; and

(2) processes for filing complaints about the provision of TxHmL Program services including:

(A) the telephone number of the LIDDA [local authority] to file a complaint;

(B) the toll-free telephone number of DADS to file a complaint; and

(C) the toll-free telephone number of DFPS (1-800-647-7418) to report an allegation [file a complaint] of abuse, neglect, or exploitation.

(e) [(f)] A LIDDA [local authority] must maintain for each individual for an IPC year:

(1) a copy of the [current] IPC;

(2) the [a current] PDP;

(3) a copy of the [current] ID/RC Assessment; [and]

(4) documentation of the activities performed by the service coordinator in providing service coordination; and [current service information.]

(5) any other pertinent information related to the individual.

(f) [(g)] For an individual receiving TxHmL Program services within a LIDDA's [the local authority's] local service area, the LIDDA [local authority] must provide the individual's program provider a copy of the individual's current PDP, IPC, and ID/RC Assessment.

(g) [(h)] A LIDDA [local authority] must employ service coordinators who:

(1) meet the minimum qualifications and staff training requirements specified in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability); and

(2) have received training about:

(A) the TxHmL Program, including the requirements of this subchapter and the TxHmL Program services as described [specified] in §9.555 of this subchapter (relating to Description [Definitions] of TxHmL Program Services); and [-]

(B) Chapter 41 of this title (relating to Consumer Directed Services Option).

(h) [(i)] A LIDDA [local authority] must ensure that a service coordinator:

(1) initiates, coordinates, and facilitates the person-directed planning process to meet the desires and needs as identified by an individual and LAR in the individual's PDP, including:

(A) scheduling service planning team meetings; and

(B) documenting on the PDP whether, for each TxHmL Program service identified on the PDP, the service is critical to meeting the individual's health and safety as determined by the service planning team;

(2) coordinates the development and implementation of the individual's PDP;

[(3) submits a correctly completed request for authorization of payment from non-TxHmL Program sources for which an individual may be eligible;]

(3) [(4)] coordinates and develops an individual's IPC based on the individual's PDP;

(4) [(5)] coordinates and monitors the delivery of TxHmL Program services and non-TxHmL Program services;

[(6)] integrates various aspects of services delivered under the TxHmL Program and through non-TxHmL Program sources;

(5) [(7)] records each individual's progress;

(6) [(8)] develops a plan required by §9.570(c)(2) of this subchapter (relating to Termination and Suspension of TxHmL Program Services) that addresses assistance for the individual after termination of the individual's TxHmL Program services; and

(7) [(9)] keeps records as they pertain to the implementation of an individual's PDP.

(i) [(j)] A LIDDA [local authority] must ensure that an individual or LAR is informed of the name of the individual's service coordinator and how to contact the service coordinator.

(j) [(k)] A service coordinator must:

(1) assist the individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) assist the individual's LAR or family members to encourage the individual to exercise the individual's rights;

(3) inform the individual or LAR orally and in writing of:

(A) the eligibility criteria for participation in the TxHmL Program;

(B) the services and supports provided by the TxHmL Program and the limits of those services and supports; and

(C) the reasons an individual's TxHmL Program services may be terminated as described in §9.570(a);

(4) ensure that the individual and LAR participate in developing a personalized PDP and IPC that meet the individual's identified needs and service outcomes and that the individual's PDP is updated when the individual's needs or outcomes change but not less than annually;

(5) ensure that a restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

(6) if notified by the program provider that an individual or LAR has refused a nursing assessment and that the program provider has determined that it cannot ensure the individual's health, safety, and welfare in the provision of a service as described in §9.578(t) of this subchapter (relating to Program Provider Certification Principles: Service Delivery) [; a service coordinator must]:

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) community support, day habilitation, employment assistance, supported employment, or respite, if the individual needs one of those services and the program provider has determined that it cannot ensure the health, safety, and welfare of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(7) ensure that the individual or LAR is informed of decisions regarding denial or termination of services and the individual's or LAR's right to request a fair hearing as described in §9.571 of this subchapter (relating to Fair Hearings);

(8) ensure that, if needed, the individual or LAR participates in developing a plan required by §9.570(c)(2) of this subchapter that addresses assistance for the individual after termination of the individual's TxHmL Program services; and

(9) in accordance with DADS instructions, manage the process to transfer an individual's TxHmL Program services from one program provider to another or transfer from one FMSA to another [~~in accordance with DADS instructions~~], including:

(A) informing the individual or LAR who requests a transfer to another program provider or FMSA that the service coordinator will manage the transfer process;

(B) informing the individual or LAR that the individual or LAR may choose:

(i) to receive TxHmL Program services from any program provider that is in the geographic location preferred by the individual or LAR and whose enrollment has not reached its service capacity in the DADS data system; or

(ii) to transfer to any FMSA in the geographic location preferred by the individual or LAR; and

(C) if the individual or LAR has not selected another program provider or FMSA, providing [~~provide~~] the individual or LAR with a list of and contact information for [~~available~~] TxHmL Program providers and FMSAs in the geographic location [~~locations~~] preferred by the individual or LAR.

(k) [(h)] When a change to an individual's PDP or IPC is indicated, the service coordinator must discuss the need for the change with the individual or LAR, the individual's program provider, and other appropriate persons as necessary.

(l) [(m)] At least 30 calendar days before the expiration of an individual's IPC, the service coordinator must:

(1) update the individual's PDP in conjunction with the individual's service planning team; and

(2) if the individual receives a TxHmL Program service from a program provider, submit the updated PDP to the program provider for the program provider to complete an implementation plan to accomplish the outcomes identified in the updated PDP.

(m) [(n)] A service coordinator must:

(1) review the status of an individual whose services have been suspended at least every 90 calendar days following the effective date of the suspension and document in the individual's record the reasons for continuing the suspension; and

(2) if the suspension continues 270 calendar days, submit written documentation of the 90, 180, and 270 calendar day reviews to DADS for review and approval to continue the suspension status.

(n) [(o)] A service coordinator must:

(1) inform the individual or LAR orally and in writing, of the requirements described in subsection (k) of this section:

(A) upon receipt of DADS approval of the enrollment of the individual;

(B) if the requirements described in subsection (k) of this section are revised;



- (C) at the request of the individual or LAR; and
- (D) if the legal status of the individual changes; and

(2) document that the information described in paragraph (1) of this subsection was provided to the individual or LAR.

~~(p) A service coordinator must comply with Chapter 41, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination) and document compliance in the individual's record.~~

(o) A service coordinator must conduct:

(1) a pre-move site review for an applicant 21 years of age or older who is enrolling in the TxHmL Program from a nursing facility; and

(2) post-move monitoring visits for an individual 21 years of age or older who enrolled in the TxHmL Program from a nursing facility or has enrolled in the TxHmL Program as a diversion from admission to a nursing facility.

(p) At least monthly, a service coordinator must have one face-to-face contact with an individual whose TxHmL Program services have not been suspended to provide service coordination.

(q) In addition to the requirements described in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability), a LIDDA must, in the provision of service coordination in the TxHmL Program, ensure compliance with the requirements in this subchapter and Chapter 41 of this title.

(r) A service coordinator must:

(1) at least annually, in accordance with Chapter 41, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination):

(A) inform the individual or LAR of the individual's right to participate in the CDS option; and

(B) inform the individual or LAR that the individual or LAR may choose to have one or more services provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option); and

(2) document compliance with paragraph (1) of this subsection in the individual's record.

(s) [(q)] If an individual or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the individual or LAR regarding all FMSAs providing services in the LIDDA's [local authority's] local service area;

(2) document the individual's or LAR's choice of FMSA on Form 1584;

(3) document, in the individual's PDP, a description of the services provided through the CDS option; and

(4) document, in the individual's PDP, a description of the individual's service backup plan.

(t) [(r)] For an individual participating in the CDS option, the LIDDA [local authority] must recommend to DADS that FMS and support consultation, if applicable, be terminated if the service coordinator determines that:

(1) the individual's continued participation in the CDS option poses a significant risk to the individual's health, safety or welfare; or

(2) the individual or LAR has not complied with Chapter 41, Subchapter B of this title (relating to Responsibilities of Employers and Designated Representatives).

(u) [(s)] If a LIDDA [local authority] makes a recommendation under subsection (t) [(r)] of this section, the local authority must:

(1) electronically transmit the individual's IPC to DADS; and

(2) in accordance with Chapter 41, Subchapter D of this title, submit documentation required by DADS in writing, to the Department of Aging and Disability Services, Access and Intake, Program Enrollment, P.O. Box 149030, Mail Code W-551, Austin, Texas 78714-9030.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502572

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 438-3693



#### 40 TAC §9.556

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §9.556. Notification of Applicants.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502574



## CHAPTER 42. DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §42.103, concerning definitions, in Subchapter A, Introduction; amendments to §42.201, concerning eligibility criteria; §42.211, concerning written offer of a DBMD program; §42.212, concerning process for enrollment of an individual; §42.213, concerning program provider cannot ensure individual's health and welfare; §42.214, concerning development of enrollment individual plan of care (IPC); §42.216, concerning DADS review of request for enrollment; §42.221, concerning utilization review of IPC by DADS; §42.222, concerning annual review and reinstatement of lapsed diagnostic eligibility; §42.241, concerning denial of request for enrollment in the DBMD program or of a DBMD program service; §42.243, concerning reduction of a DBMD program service; §42.249, concerning individual whose DBMD program services are terminated may request name be added to interest list; new §42.202, concerning DBMD interest list; and the repeal of §42.202 concerning interest list, in Subchapter B, Eligibility, Enrollment, and Review; amendments to §42.301, concerning program providers, in Subchapter C, Program Provider Enrollment; amendments to §42.402, concerning staff qualifications; and §42.403, concerning training, in Subchapter D, Additional Program Provider Provisions, in Chapter 42, Deaf Blind with Multiple Disabilities (DBMD) Program.

### BACKGROUND AND PURPOSE

The proposed rules describe DADS current practices regarding maintaining the DBMD interest list and making and withdrawing offers of DBMD Program services. The proposed rules require DADS to keep the name of a military family member who resides out of state on the DBMD interest list for up to one year after the military member's active duty ends. Ordinarily, a person who resides out of state is not permitted to be on the DBMD interest list. The proposed rules also allow a person other than the individual or legally authorized representative (LAR) to request that an individual's name be added to the DBMD interest list, allow a person to make a written request to DADS to add an individual's name to the interest list, allow DADS to reinstate an individual's name to the interest list with the original request date if a request to reinstate is received by DADS within 90 calendar days after the individual's name was removed from the list, and allow DADS to withdraw an offer of DBMD Program services if the appropriate forms are not timely submitted to DADS within 60 days, rather than 30 days. The proposed rules on reinstatement mitigate hardship on an individual and potential errors by DADS. In addition, the proposed rules give an individual sufficient time to respond to an offer, but also allow DADS to offer services to the next individual on the interest list if the individual does not take action necessary to proceed with enrollment.

The proposed amendments also revise rules regarding enrollment, individual plans of care, DADS review of an enrollment request, utilization review of an individual plan of care, lapsed

diagnostic eligibility, denial of program eligibility or a service, and service reduction, by correcting rule references and more accurately stating requirements and DADS processes. The proposed rules amend requirements for a service provider of employment assistance and supported employment to be consistent with the DBMD waiver application.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §42.103 amends the definition of "CMS--The Centers for Medicare and Medicaid Services," "contract," "DBMD Program specialist," "denial," "FMS," "natural supports," and "program provider." In addition, the proposed amendment revises the definition of "IPC" to emphasize the IPC is developed using person-centered planning and documented on a DADS form. The proposed amendment adds definitions of "military member," "military family member," and "nursing facility." The proposed amendment changes the term "person-directed planning" to "person-centered planning" and amends the definition to emphasize that the individual or LAR on the individual's behalf directs the development of the IPC. The proposed amendment deletes the term "request date" and its definition because proposed new §42.202 specifies how an interest list request date is determined. The definition of "service planning team" is amended to clarify that if the DBMD program case manager and program director are the same person, a registered nurse designated by the program provider must serve on the service planning team in addition to the case manager.

The proposed amendment to §42.201 adds a reference to Appendix B of the DBMD Program waiver application approved by CMS for the financial eligibility criteria an individual must meet to be eligible for DBMD Program services. The proposed amendment also revises the eligibility requirements by adding that an individual may not receive a mutually exclusive service identified in the Mutually Exclusive Services table in Appendix V of the DBMD Program Manual.

The proposed repeal of §42.202, containing requirements related to the DBMD interest list, allows for proposed new §42.202 on the same topic.

The proposed new §42.202 allows a person to call or write to DADS requesting an individual be placed on the interest list and requires an individual to reside in Texas. The proposed rule describes how the interest list request date is determined if a person calls or writes to DADS or if an individual is determined diagnostically or functionally ineligible for another waiver program. The proposed rule also describes the circumstances under which DADS removes an individual's name from the DBMD interest list and may reinstate a name after it is removed. The proposed rule describes how an interest list request date is assigned when a name is reinstated on the interest list, and the notification an individual or LAR receives regarding the reinstatement.

The proposed amendment to §42.211 changes the title from "Written Offer of a DBMD Program Vacancy" to "Written Offer of DBMD Program Services." The proposed amendment establishes that DADS sends a written offer of DBMD Program services to the individual whose interest list request date is the earliest, unless the individual is a military family member living outside of Texas, or to an individual who is residing in a nursing facility and requesting DBMD Program services. The proposed amendment adds the Applicant Acknowledgement form as a document DADS encloses with the written offer of DBMD Program services, a form the individual or LAR must

complete and submit to DADS to accept the offer of DBMD Program services, and a form DADS must receive to notify the program provider designated by the individual or LAR. The proposed amendment gives the individual or LAR 60 calendar days after the date on DADS offer letter to submit the required forms or DADS withdraws the offer of DBMD Program services. The proposed amendment states that DADS withdraws an offer of DBMD Program services if the offer was made because an individual was residing in a nursing facility and the individual was discharged from the nursing facility before the effective date of the enrollment IPC. The proposed amendment reformats the section and makes minor editorial changes.

The proposed amendment to §42.212 adds the Mutually Exclusive Services table in Appendix V of the DBMD Program Manual as the source for determining which programs and services are not available to someone enrolled in the DBMD Program. The proposed amendment requires a case manager to explain to an individual who is enrolled in another waiver program or receiving a mutually exclusive service identified in the Mutually Exclusive Services table, that the individual or LAR must choose between the DBMD Program and the other waiver program or mutually exclusive service. The proposed amendment makes several minor editorial changes.

The proposed amendment to §42.213 updates cross-references, updates section titles, and makes minor editorial changes.

The proposed amendment to §42.214 reformats the section to clarify and reorganize the requirements for an enrollment IPC developed by an individual's service planning team. The proposed amendment makes minor editorial changes.

The proposed amendment to §42.216 updates the references to the requirements for an enrollment IPC. The proposed amendment provides that an individual's request for enrollment in the DBMD program will be denied if the individual is enrolled in another waiver program or receiving a mutually excluded service. The proposed amendment updates a reference to the documentation a case manager must provide to DADS upon request.

The proposed amendment to §42.221 states that when DADS conducts utilization review of an IPC, it includes DADS determining if an individual's IPC meets the eligibility criteria of having an IPC with a cost for DBMD Program services at or below \$114,736.07. The proposed amendment also states that if DADS determines the eligibility criteria is not met, DADS notifies the program provider, sends written notice to the individual or LAR that the individual's DBMD Program services are proposed for termination, and includes in the notice the individual's right to request a fair hearing. The proposed amendment clarifies and updates the references to the requirements for the DBMD Program services specified in the IPC. The proposed amendment makes editorial changes, updates the title of a section, reformats the rule, and updates a reference.

The proposed amendment to §42.222 replaces a "program provider" with a "case manager" as the person who must submit a current ID/RC Assessment to DADS to establish that an individual continues to meet the diagnostic eligibility criteria. The proposed amendment adds a reference to the rule that establishes the timeframe for a case manager to, submit assessments and supporting documentation related to the individual's diagnosis, if requested to do so by DADS. The proposed amendment replaces "MR/RC" with "ID/RC" and makes other editorial changes.

The proposed amendment to §42.241 updates the references to the requirements for the DBMD Program services specified on an IPC, replaces "CDSA" with "FMSA," and makes minor editorial changes.

The proposed amendment to §42.243 updates the references to the requirements for the DBMD Program services specified on an IPC, replaces "CDSA" with "FMSA," and clarifies that the "service" means a DBMD Program service.

The proposed amendment to §42.249 changes the title to clarify that it is referencing the DBMD interest list. The proposed amendment updates a reference and a section title based on the proposed new §42.202.

The proposed amendment to §42.301 changes the title of the section from "Program Providers" to "Program Provider Compliance with Rules." The proposed amendment requires a program provider, in addition to complying with Chapter 49, to comply with Chapters 41 and 42, regarding consumer directed services and DBMD.

The proposed amendment to §42.402 requires a program provider to ensure that an intervener is not a parent of the individual to whom the intervener is assigned if the individual is under 18 years of age. The proposed amendment deletes the requirement that a service provider of employment assistance or supported employment not be the LAR of the individual and adds a requirement that a service provider of employment assistance or supported employment is not the spouse of the individual or, if the individual is under 18 years of age, a parent of the individual. The proposed amendment also reformats the rule.

The proposed amendment to §42.403 requires a program provider to ensure that, before assuming job duties, a program director, an intervener, or a service provider of licensed assisted living, licensed home health assisted living, case management, day habilitation, employment assistance, residential habilitation, respite, or supported employment, completes and has current documentation of completion of hands-on skills training in CPR, first aid, and choking prevention. The rule currently identifies the services for which a service provider is not required to complete training, which are behavioral support, chore services, orientation and mobility, nursing, specialized nursing, and a therapy. As amended, a service provider of adaptive aides or minor home modifications is not required to complete the training. The proposed amendment also replaces "person-directed planning" with "person-centered planning" in the curriculum that a program director or case manager must complete.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments, new section, and repeal are in effect, there are foreseeable implications relating to costs or revenues of state government. Specifically, the new requirement that a registered nurse designated by the program provider participate in an individual's service planning team if the program director is the individual's case manager, will add, on average, one hour of nursing to a DBMD service plan. This will result in a small increase in cost. The estimated cost to the state is \$4,311 in fiscal year 2016, and \$5,073 per year in fiscal years 2017 through 2021.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments, new section, and repeal will not have an adverse economic effect on small businesses or micro-businesses.

#### PUBLIC BENEFIT AND COSTS

Kristi Jordan, Deputy Commissioner, has determined that, for each year of the first five years the amendments are in effect, the public will benefit from rules that more clearly address an individual's placement on the DBMD interest list and the timeframes for an individual on the interest list to enroll in DBMD before the individual's name is removed from the interest list and an offer is made to another individual. The public also will benefit from rules that clarify the denial and reduction of services process, who may provide employment assistance or supported employment, and who must receive certain training.

Ms. Jordan anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Debra Campbell at (512) 438-5645 in DADS Long-Term Services and Supports/Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R01, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R01" in the subject line.

### SUBCHAPTER A. INTRODUCTION

#### 40 TAC §42.103

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall

adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

##### §42.103. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual's service planning team, based on the person's:

(A) interactions with the individual;

(B) availability to the individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(2) Activities of daily living (ADL)--Activities that are essential to daily self care, including bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer and ambulation, positioning, and assistance with self-administered medications.

(3) Adaptive aid--An item or service (including a medically necessary supply or device) that enables an individual to retain or increase the ability to:

(A) perform activities of daily living; or

(B) perceive, control, or communicate with the environment in which the individual lives.

(4) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.

(5) Adaptive behavior level--The categorization of an individual's functioning level based on a standardized measure of adaptive behavior. Four levels are used ranging from mild limitations in adaptive skills (I) through profound limitations in adaptive skills (IV).

(6) Adaptive behavior screening assessment--A standardized assessment used to determine an individual's adaptive behavior level, and conducted using one of the following assessment instruments:

(A) American Association of Intellectual and Developmental Disabilities (AAIDD) Adaptive Behavior Scales (ABS);

(B) Inventory for Client and Agency Planning (ICAP);

(C) Scales of Independent Behavior--Revised (SIB-R); or

(D) Vineland Adaptive Behavior Scales, Second Edition (Vineland-II).

(7) ALF--Assisted living facility. An entity required to be licensed under the Texas Health and Safety Code, (THSC), Chapter 247, Assisted Living Facilities.

(8) Behavioral emergency--A situation in which an individual is acting in an aggressive, destructive, violent, or self-injurious manner that poses a risk of death or serious bodily harm to the individual or others.

(9) Behavioral support--Formerly referred to as "behavior communication," a service that provides specialized interventions that assist an individual to increase adaptive behaviors to replace or modify challenging or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life, with a particular emphasis on communication as it affects behavior.

(10) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(11) Calendar day--Any day, including weekends and holidays.

(12) Case management--Services that assist an individual to gain access to needed waiver and other state plan services, as well as needed medical, social, education, and other services, regardless of the funding source for the services.

(13) Case manager--A service provider who is responsible for the overall coordination and monitoring of DBMD Program services provided to an individual.

(14) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(15) CDSA--FMSA.

(16) Chore services--Services needed to maintain a clean, sanitary, and safe environment in an individual's home.

(17) CMS--The Centers for Medicare and Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(18) Competitive employment--Employment that pays an individual at least minimum wage if the individual is not self-employed.

(19) Contract--[A written agreement between DADS and a program provider for the program provider to provide DBMD Program services.] A contract is a provisional contract that DADS enters into in accordance with §49.208 of this chapter (relating to Provisional Contract Application Approval) that has a stated expiration date or a standard contract that DADS enters into in accordance with §49.209 of this chapter (relating to Standard Contract) that does not have a stated expiration date.

(20) DADS--The Department of Aging and Disability Services.

(21) DAHS--Day Activity and Health Services. Day activity and health services as defined in §98.2 of this title (relating to Definitions).

(22) DBMD Program--The Deaf Blind with Multiple Disabilities Waiver Program.

(23) DBMD Program specialist--Employee in DADS [DADS] state office who is the primary contact for the DBMD Program.

(24) Deafblindness--A chronic condition in which a person:

(A) has deafness, which is a hearing impairment severe enough that most speech cannot be understood with amplification; and

(B) has legal blindness, which results from a central visual acuity of 20/200 or less in the person's better eye, with correction, or a visual field of 20 degrees or less.

(25) Denial--A DADS [DADS] action that disallows:

(A) an individual's request for enrollment in the DBMD Program;

(B) a DBMD Program service requested on an IPC that was not authorized on the prior IPC; or

(C) a portion of the amount or level of a DBMD Program service requested on an IPC that was not authorized on the prior IPC.

(26) Dental treatment--A service that provides the following services, as described in Appendix C of the DBMD Program waiver application (found on the DBMD Program page of DADS website at [www.dads.state.tx.us](http://www.dads.state.tx.us)):

(A) therapeutic, orthodontic, routine preventive, and emergency treatment; and

(B) sedation.

(27) Developmental disability--As defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Section 102(8), a severe, chronic disability of an individual five years of age or older that:

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the individual attains 22 years of age;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(28) DFPS--Department of Family and Protective Services.

(29) Dietary services--A therapy service that:

(A) assists an individual to meet basic or special therapeutic nutritional needs through the development of individual meal plans; and

(B) is provided by a person licensed in accordance with Texas Occupations Code, Chapter 701, Dietitians.

(30) Employment assistance--Assistance provided to an individual to help the individual locate competitive employment in the community.

(31) FMS--Financial management services. Services, as defined in §41.103 of this title provided to an individual participating [who chooses to participate] in the CDS option.

(32) FMSA--Financial management services agency. An entity, as defined in §41.103 of this title, that provides FMS to an individual participating in the CDS option.

(33) Functions as a person with deafblindness--Situation in which a person is determined:

(A) to have a progressive medical condition, manifested before 22 years of age, that will result in the person having deafblindness; or

(B) before attaining 22 years of age, to have limited hearing or vision due to protracted inadequate use of either or both of these senses.

(34) Habilitation--Services that assist an individual in acquiring, retaining, and improving socialization and adaptive skills related to activities of daily living to enable the individual to live successfully in the community and participate in home and community life, including day habilitation and residential habilitation.

(35) HCSSA (Home and community support services agency) --An entity required to be licensed under THSC, Chapter 142, Home and Community Support Services.

(36) HHSC--Texas Health and Human Services Commission.

(37) ICF/IID--A facility in which ICF/IID Program services are provided.

(38) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program that provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(39) ID/RC Assessment (Intellectual Disability/Related Condition Assessment)--An assessment conducted to determine if an individual meets the diagnostic eligibility criteria for the DBMD Program.

(40) Impairment to independent functioning--An adaptive behavior level of II, III, or IV.

(41) Individual--A person seeking to enroll or who is enrolled in the DBMD Program.

(42) Institutional services--Services provided in an ICF/IID or a nursing facility.

(43) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

(44) Intervener--A service provider with specialized training and skills in deafblindness who, working with one individual at a time, serves as a facilitator to involve an individual in home and community services and activities, and who is classified as an "Intervener", "Intervener I", "Intervener II", or "Intervener III" in accordance with Texas Government Code, §531.0973.

(45) IPC--Individual Plan of Care. A written [DADS form that documents the] plan developed by an individual's service planning team using person-centered [person-directed] planning and documented on a DADS form that: [describes the type, amount, and estimated cost of each DBMD Program service to be provided to an individual.]

(A) meets:

(i) the criteria in §42.201(5) of this chapter (relating to Eligibility Criteria); and

(ii) the requirements described in §42.214(a)(1) and (b)(1) - (6) of this chapter (relating to Development of Enrollment Individual Plan of Care (IPC)); and

(B) is authorized by DADS in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review).

(46) IPP--Individual Program Plan. A written plan documented on a DADS form and completed by an individual's case manager that describes the goals and objectives for each DBMD Program service included on the individual's IPC.

(47) IPC period--The effective period of an IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of service approved by DADS until the first calendar day of the same month of the effective date of service in the following year; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC.

(48) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(49) Licensed assisted living--A service provided in a residence licensed in accordance with Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities) for four to six individuals.

(50) Licensed home health assisted living--A service provided by a program provider licensed in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) in a residence for no more than three individuals, at least one of whom owns or leases the residence.

(51) LVN--Licensed vocational nurse. A person licensed to provide vocational nursing in accordance with Texas Occupations Code, Chapter 301, Nurses.

(52) Mechanical restraint--A mechanical device, material, or equipment used to control an individual's behavior by restricting the ability of the individual to freely move part or all of the individual's body. The term does not include a protective device.

(53) Medicaid--A program funded jointly by the states and the federal government that provides medical benefits to groups of low-income people, some who may have no medical insurance or inadequate medical insurance.

(54) Medicaid waiver program--A service delivery model authorized under §1915(c) of the Social Security Act in which certain Medicaid statutory provisions are waived by CMS.

(55) Military member--a member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty.

(56) Military family member--an applicant who is the spouse or child (regardless of age) of:

(A) a military member who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch; or

(B) a former military member who had declared and maintained Texas as the member's state of legal residence in the manner provided by the applicable military branch:

(i) who was killed in action; or

(ii) who died while in service.

(57) [(55)] Minor home modifications--Physical adaptation to an individual's residence necessary to address the individual's specific needs and enable the individual to function with greater independence or control the residence's environment.

(58) [(56)] MR/RC Assessment (Mental Retardation/Related Condition Assessment)--ID/RC Assessment.

(59) [(57)] Natural supports--Unpaid [Assistance to help sustain an individual's living in the community from] persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual [that occurs naturally within the individual's environment].

(60) [(58)] Nursing--Treatments and health care procedures provided by an RN or LVN that are:

(A) ordered by a physician; and

(B) provided in compliance with:

(i) Texas Occupations Code, Chapter 301, Nurses; and

(ii) rules at Texas Board of Nursing at Texas Administrative Code (TAC), Title 22, Part 11, Texas Board of Nursing.

(61) Nursing facility--A facility required to be licensed under Texas Health and Safety Code, Chapter 242.

(62) [(59)] Occupational therapy--Services that:

(A) address physical, cognitive, psychosocial, sensory, and other aspects of performance to support an individual's engagement in everyday life activities that affect health, wellbeing, and quality of life; and

(B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 454, Occupational Therapists.

(63) [(60)] Orientation and mobility--Service that assists an individual to acquire independent travel skills that enable the individual to negotiate safely and efficiently between locations at home, school, work, and in the community.

(64) [(61)] Person-centered [Person-directed] planning--A process that empowers the individual (and the LAR on the individual's behalf) to direct the development of a plan for supports and services that meets [meet] the individual's outcomes. The process:

(A) identifies existing supports and services necessary to achieve the individual's outcomes;

(B) identifies natural supports available to the individual and negotiates needed services and supports;

(C) occurs with the support of a group of people chosen by the individual (and the LAR on the individual's behalf); and

(D) accommodates the individual's style of interaction and preferences regarding time and setting.

(65) [(62)] Personal funds--The funds that belong to an individual, including earned income, social security benefits, gifts, and inheritances.

(66) [(63)] Personal leave day--A continuous 24-hour period, measured from midnight to midnight, when an individual who resides in a residence in which licensed assisted living or licensed home health assisted living is provided is absent from the residence for personal reasons.

(67) [(64)] Physical restraint--Any manual method used to control an individual's behavior, except for physical guidance or

prompting of brief duration that an individual does not resist, that restricts:

(A) the free movement or normal functioning of all or a part of the individual's body; or

(B) normal access by an individual to a portion of the individual's body.

(68) [(65)] Physical therapy--Services that:

(A) prevent, identify, correct, or alleviate acute or prolonged movement dysfunction or pain of anatomic or physiologic origin; and

(B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 453, Physical Therapists.

(69) [(66)] Physician--As defined in §97.2 of this title (relating to Definitions), a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a client and orders home health or hospice services for the client, in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(70) [(67)] Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide [An entity that provides] DBMD Program services, excluding an FMSA [under a contract].

(71) [(68)] Protective device--An item or device, such as a safety vest, lap belt, bed rail, safety padding, adaptation to furniture, or helmet, if:

(A) used only:

(i) to protect an individual from injury; or

(ii) for body positioning of the individual to ensure health and safety; and

(B) not used to modify or control behavior.

(72) [(69)] Psychoactive medication restraint--A medication used to control an individual's behavior or to restrict the individual's freedom of movement that is not a standard treatment for the individual's medical or psychological condition.

(73) [(70)] Reduction--A DADS action taken as a result of a review of a revision or renewal IPC that decreases the amount or level of a service authorized by DADS on the prior IPC.

(74) [(71)] Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

~~(72) Request date--The date an individual or LAR requests the individual's name be added to the DBMD Program interest list.~~

~~(75) [(73)] Respite--Services provided on a short-term basis to an individual because of the absence or need for relief of an individual's unpaid caregiver.~~

~~(76) [(74)] Restraint--Any of the following:~~

~~(A) a physical restraint;~~

~~(B) a mechanical restraint; or~~

~~(C) a psychoactive medication restraint.~~

~~(77) [(75)] Restrictive intervention--An action or procedure that limits an individual's movement, access to other individuals, locations or activities, or restricts an individual's rights, including a restraint, a protective device, and seclusion.~~

~~(78) [(76)] RN--Registered nurse. A person licensed to provide professional nursing in accordance with Texas Occupations Code, Chapter 301, Nurses.~~

~~(79) [(77)] Seclusion--A restrictive intervention that is the involuntary separation of an individual away from other individuals in an area that the individual is prevented from leaving.~~

~~(80) [(78)] Service planning team--A team [comprising persons] convened and facilitated by a DBMD Program case manager for the purpose of developing, reviewing, and revising an individual's IPC. The team consists of [includes]:~~

~~(A) the individual;~~

~~(B) if applicable, the individual's LAR or an actively involved person;~~

~~(C) the DBMD Program case manager;~~

~~(D) except as described in subparagraph (E) of this paragraph, the program director or a RN designated by the program provider;~~

~~(E) if the DBMD Program case manager and program director are the same person, a RN designated by the program provider, in addition to the DBMD Program case manager;~~

~~(F) [(C)] other persons whose inclusion is requested by the individual, LAR, or actively involved person; and~~

~~[(D)] the program director or a RN designated by the program provider; and~~

~~(G) [(E)] other persons selected by the program provider who are:~~

~~(i) professionally qualified by certification or licensure and have special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or~~

~~(ii) directly involved in the delivery of services and supports to the individual.~~

~~(81) [(79)] Service provider--A person who provides a DBMD Program service directly to an individual and who is an employee or contractor of:~~

~~(A) the program provider; or~~

~~(B) the individual or LAR, if the individual has chosen the CDS option.~~

~~(82) [(80)] Significantly subaverage general intellectual functioning--Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.~~

~~(83) [(81)] Speech, language, audiology therapy--Services that:~~

~~(A) address the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes; and~~

~~(B) are provided by a person licensed in accordance with Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.~~

~~(84) [(82)] Specialized nursing--Nursing provided to an individual who has a tracheostomy or is dependent on a ventilator.~~

~~(85) [(83)] SSA--Social Security Administration.~~

~~(86) [(84)] SSI--Supplemental Security Income.~~

~~(87) [(85)] Support consultation--A service, as defined in §41.103 of this title, that may be chosen by an individual who chooses to participate in the CDS option.~~

~~(88) [(86)] Supported employment--Assistance provided, in order to sustain competitive employment, to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.~~

~~(89) [(87)] TAC--Texas Administrative Code.~~

~~(90) [(88)] TAS--Transition Assistance Services. Services provided to a Medicaid-eligible person receiving institutional services in Texas to assist with setting up a household when transitioning from institutional services into the DBMD Program.~~

~~(91) [(89)] TMHP--Texas Medicaid & Healthcare Partnership. The Texas Medicaid program claims administrator.~~

~~(92) [(90)] Transfer--The movement of an individual from a DBMD Program provider or a FMSA to a different DBMD Program provider or FMSA.~~

~~(93) [(91)] Trust fund account--An account at a financial institution that contains an individual's personal funds and is under the program provider's control.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.





SUBCHAPTER B. ELIGIBILITY,  
ENROLLMENT, AND REVIEW  
DIVISION 1. ELIGIBILITY

40 TAC §42.201, §40.202

STATUTORY AUTHORITY

The amendment and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment and new section affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§42.201. *Eligibility Criteria.*

An individual is eligible for DBMD Program services if:

(1) the individual meets the financial eligibility criteria as described in Appendix B of the DBMD Program waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us) [is financially eligible for Medicaid because the individual receives supplemental security income cash benefits or is determined by HHSC to be financially eligible for Medicaid];

(2) the individual is determined by DADS to meet the diagnostic eligibility criteria described in §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria);

(3) the individual, as documented on an ID/RC Assessment form:

(A) has one or more diagnosed related conditions and, as a result:

- (i) has deafblindness;
- (ii) has been determined to have a progressive medical condition that will result in deafblindness; or
- (iii) functions as a person with deafblindness; and

(B) has one or more additional disabilities that result in impairment to independent functioning;

(4) the individual's related conditions, as described in paragraph (3)(A) of this section, manifested before the individual became 22 years of age;

(5) the individual has an IPC with a cost for DBMD Program services at or below \$114,736.07;

(6) the individual is not enrolled in another [a Medicaid] waiver program or receiving a mutually excluded service, as identified in the Mutually Exclusive Services table in Appendix V of the DBMD Program Manual available at [www.dads.state.tx.us](http://www.dads.state.tx.us) [other than the DBMD Program or another DADS operated program as described in the DBMD Program Manual other than Day Activity and Health Services (DAHS)];

(7) the individual does not reside in:

(A) an ICF/IID;

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242, Convalescent and Nursing Homes and related Institutions;

(C) an ALF, unless it provides licensed assisted living in the DBMD Program;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services (DSHS);

(F) a residential facility operated by the Texas Youth Commission; or

(G) a jail or prison;

(8) at least one program provider is willing to provide DBMD Program services to the individual; and

(9) the individual resides or moves to reside in a county served by a program provider.

§42.202. *DBMD Interest List.*

(a) DADS maintains an interest list that contains the names of individuals interested in receiving DBMD Program services.

(b) A person may request an individual's name be added to the DBMD interest list by:

(1) calling DADS toll-free number; or

(2) submitting a written request to DADS.

(c) DADS adds an individual's name to the DBMD interest list:

(1) if the individual resides in Texas; and

(2) with an interest list request date as follows:

(A) for an individual who requests to be added to the interest list in accordance with subsection (b) of this section, the date of the request; or

(B) for an individual determined diagnostically or functionally ineligible for another DADS waiver program, one of the following dates, whichever is earlier:

(i) the request date of the interest list for the other waiver program; or

(ii) an existing request date for the DBMD Program for the individual.

(d) DADS removes an individual's name from the DBMD interest list if:

(1) the individual moves out of Texas, unless the individual is a military family member living outside of Texas for less than one year after the military member's active duty ends;

(2) DADS withdraws an offer of a DBMD Program Services as described in §42.211(e) of this subchapter (relating to Written Offer of DBMD Program Services), unless the individual is a military family member living outside of Texas for less than one year after the military member's active duty ends;

(3) the individual is a military family member living outside of Texas for more than one year after the military member's active duty ends;

(4) the individual is deceased; or

(5) DADS has denied the individual enrollment in the DBMD Program and the individual or LAR has had an opportunity to exercise the individual's right to appeal the decision in accordance with §42.251 of this subchapter (relating to Individual's Right to a Fair Hearing) and did not appeal the decision, or appealed and did not prevail.

(e) If DADS removes an individual's name from the DBMD interest list in accordance with subsection (d)(1) - (3) of this section and, within 90 calendar days after the name was removed, DADS receives an oral or written request from a person to reinstate the individual's name on the interest list, DADS:

(1) reinstates the individual's name to the interest list based on the original request date described in subsection (c)(2)(A) or (B) of this section; and

(2) notifies the individual or LAR in writing that the individual's name has been reinstated to the interest list in accordance with paragraph (1) if this subsection.

(f) If DADS removes an individual's name from the DBMD interest list in accordance with subsection (d)(1) - (3) of this section and, more than 90 calendar days after the name was removed, DADS receives an oral or written request from a person to reinstate the individual's name on the interest list, DADS:

(1) adds the individual's name to the interest list based on the date DADS receives the oral or written request; and

(2) notifies the individual or LAR in writing that the individual's name has been added to the interest list in accordance with paragraph (1) of this subsection.

(g) If DADS removes an individual's name from the DBMD interest list in accordance with subsection (d)(5) of this section and DADS subsequently receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) adds the individual's name to the interest list based on the date DADS receives the oral or written request; and

(2) notifies the individual or LAR in writing that the individual's name has been added to the interest list in accordance with paragraph (1) of this subsection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502580

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 438-5645



*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### **40 TAC §42.202**

##### **STATUTORY AUTHORITY**

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

##### *§42.202. Interest List.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

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Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 438-5645



#### **DIVISION 2. ENROLLMENT PROCESS**

#### **40 TAC §§42.211 - 42.214, 42.216**

##### **STATUTORY AUTHORITY**

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or

regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§42.211. *Written Offer of [a] DBMD Program Services [Vacancy].*

(a) DADS sends a written offer of DBMD Program services to [When a DBMD program vacancy occurs, DADS sends a written offer of a program vacancy to the individual whose request date is earliest on the DBMD Program interest list. ]:

(1) the individual whose interest list request date is earliest on the DBMD interest list, unless the individual is a military family member living outside of Texas; or

(2) an individual who is residing in a nursing facility and requesting DBMD Program services.

(b) DADS encloses with the written offer:

(1) a list of DBMD program [Program] providers;

(2) a Documentation of Provider Choice form; [and]

(3) in accordance with 1 TAC §351.15 (relating to Information Regarding Community-based Services), a document explaining other currently available community-based long-term support options that might be appropriate to the individual's needs; and [-]

(4) an Applicant Acknowledgement form.

(c) [(b)] The individual or LAR accepts DADS [DADS'] offer of [a] DBMD Program services [vacancy] by:

(1) selecting a program provider from the enclosed list and designating the selection on the Documentation of Provider Choice form; and

(2) ensuring the completed Documentation of Provider Choice form and Applicant Acknowledgement form are [is] submitted to DADS and postmarked or faxed no later than 60 [30] calendar days after the date on the offer letter.

(d) [(e)] Upon timely receipt of a Documentation of Provider Choice form and Applicant Acknowledgement form completed by the individual or LAR, DADS notifies the program provider designated by the individual or LAR.

(e) [(d)] DADS withdraws an offer of DBMD Program services [a program vacancy] made to an individual if:

(1) the completed Documentation of Provider Choice form and Applicant Acknowledgement form are [is] postmarked or faxed more than 60 [30] calendar days after the date on the offer letter;

(2) the individual or LAR declines the offer of DBMD Program services; [or]

(3) the individual or LAR does not complete the enrollment process as described in §42.212 of this division [chapter] (relating to Process for Enrollment of an Individual); or [-]

(4) the individual was offered DBMD Program services while the individual was residing in a nursing facility, but was discharged from the nursing facility before the effective date of the enrollment IPC.

§42.212. *Process for Enrollment of an Individual.*

(a) A program provider, after [upon] notification by DADS that an individual designated the program provider on a completed Documentation of Provider Choice form, must assign a case manager to the individual.

(b) The program provider must ensure that the assigned case manager contacts the individual or LAR within five business days after the program provider receives the DADS notification. During the initial contact, the case manager must:

(1) verify that the individual resides in a county for which the program provider has a contract;

(2) determine if the individual is currently enrolled in Medicaid;

(3) determine if the individual is currently enrolled in another [a Medicaid] waiver program [other than the DBMD Program,] or receiving a mutually excluded service, as identified in the Mutually Exclusive Services table in Appendix V of the DBMD Program Manual available at [www.dads.state.tx.us](http://www.dads.state.tx.us) [another DADS-operated program described in the DBMD Program Manual other than DAHS]; and

(4) arrange with the individual and LAR for an initial face-to-face, in-home visit to occur as soon as possible but no later than 30 calendar days after the program provider receives the DADS notification.

(c) During the initial face-to-face, in-home visit, the case manager must:

(1) explain to the individual or LAR:

(A) the DBMD Program services [and supports];

(B) the application and enrollment process described in this chapter;

(C) the individual's rights and responsibilities, including the right to request a Medicaid Fair Hearing as described in §42.251 of this subchapter [chapter] (relating to Individual's Right to a Fair Hearing);

(D) the mandatory participation requirements as described in §42.252 of this subchapter [chapter] (relating to Mandatory Participation Requirements of an Individual);

(E) if the individual is enrolled in another [a Medicaid] waiver program [other than the DBMD Program] or receiving a mutually exclusive service, as identified in the Mutually Exclusive Services table in Appendix V of [another DADS-operated program described in] the DBMD Program Manual [other than DAHS], that the individual or LAR must choose between the DBMD Program and the other waiver program or mutually exclusive service;

(F) the procedures for an individual or LAR to file a complaint regarding a DBMD Program provider;

(G) the CDS option as described in §42.217 of this division [chapter] (relating to Consumer Directed Services (CDS) Option);

(H) if the individual is Medicaid-eligible and receiving institutional services, TAS as described in Chapter 62 of this title (relating to Contracting to Provide Transition Assistance Services);

(I) the voter registration process, if the individual is 18 years of age or older; [and]

(J) how to contact the program provider, the case manager, and the RN;

(K) that the individual or LAR may request the provision of residential habilitation, case management, nursing, out-of-home respite in a camp, adaptive aids, or intervener services while the individual is temporarily staying at a location outside the contracted service delivery area but within the state of Texas during a period of no more than 60 consecutive days; and

(L) orally and in writing, procedures for reporting an allegation of abuse, neglect, and exploitation;

(2) if possible:

(A) complete an adaptive behavior screening assessment or ensure an appropriate professional completes the adaptive behavior screening assessment; and

(B) ensure an RN completes a nursing assessment using the DADS DBMD Nursing Assessment form;

(3) complete the ID/RC Assessment form; and

(4) obtain the signature of the individual or LAR on:

(A) the Verification of Freedom of Choice form designating the individual's choice regarding enrollment in the [øf] DBMD Program [services] over enrollment in the ICF/IID Program; and

(B) DADS Release of Information Consent form or a similar form developed by the program provider.

(d) If one or both of the assessments described in subsection (c)(2) of this section is not completed during the initial face-to-face, in-home visit, the case manager must ensure that the assessment is completed within 10 business days after the date of the initial face-to-face, in-home visit.

(e) If the individual is Medicaid eligible, is receiving institutional services, and anticipates needing TAS, the case manager must:

(1) provide the individual or LAR with a list of TAS provider agencies;

(2) using the TAS Assessment and Authorization form, assist the individual or LAR to:

(A) identify the individual's essential needs for TAS; and

(B) provide estimated amounts for TAS items and services; and

(3) retain the completed TAS Assessment and Authorization form in the individual's record for inclusion on the enrollment IPC as described §42.214 of this division [~~chapter~~] (relating to Development of Enrollment Individual Plan of Care (IPC)).

(f) The program provider must:

(1) gather and maintain the information necessary to process the individual's request for enrollment in the DBMD Program using forms prescribed by DADS in the *DBMD Program Manual*;

(2) assist the individual who does not have Medicaid financial eligibility or the individual's LAR to:

(A) complete an application for Medicaid financial eligibility; and

(B) submit the completed application to HHSC within 30 calendar days after the case manager's initial face-to-face, in-home visit;

(3) document in the individual's record any problems or barriers the individual or LAR encounters that may inhibit progress toward [~~towards~~] completing:

(A) the application for Medicaid financial eligibility; and

(B) enrollment in DBMD Program services; and

(4) assist the individual or LAR to overcome problems or barriers documented as described in paragraph (3) of this subsection.

(g) If an individual or LAR does not submit a completed Medicaid application to HHSC as described in subsection (f)(2)(B) of this section as a result of problems or barriers documented in subsection (f)(3) of this section but is making progress in collecting the documentation necessary for an application, the program provider may grant one or more 30 calendar day extensions.

(1) The program provider must ensure the case manager documents the rationale for an extension in the individual's record.

(2) The program provider must not issue an extension that will cause the period of Medicaid application preparation to exceed 12 months after the date of the case manager's initial face-to-face, in-home visit.

(3) The program provider must notify DADS DBMD program specialist in writing if the individual or LAR:

(A) fails to submit a completed Medicaid application to HHSC within 12 months after the date of the case manager's initial face-to-face, in-home visit; or

(B) does not cooperate with the case manager in completing the enrollment process described in this section.

(h) A program provider must ensure:

(1) the related conditions documented on the ID/RC Assessment form for the individual are on DADS Approved Diagnostic Codes for Persons with Related Conditions list contained in the DBMD Program Manual;

(2) the ID/RC Assessment is submitted to a physician for review; and

(3) the DADS Prior Authorization for Dental Services form is sent to a dentist as described in the *DBMD Program Manual* if the individual or LAR requests dental services other than an initial dental exam.

(i) After receiving the signed and dated ID/RC Assessment from the physician establishing that the individual meets the eligibility criteria described in §42.201(3) and (4) of this subchapter [~~chapter~~] (relating to Eligibility Criteria), the case manager must:

(1) convene a service planning team meeting within 10 business days after receipt of the signed and dated ID/RC Assessment; and

(2) if a DADS Prior Authorization for Dental Services form was submitted to a dentist as described in subsection (h)(3) of this section, ensure that the signed and completed form is available for the service planning team to review.

(j) During the service planning team meeting, the case manager must ensure:

(1) if the individual or LAR is requesting dental services other than an initial dental exam, the DADS Prior Authorization for Dental Services form has been signed by the dentist as described in §42.624(b) of this chapter (relating to Dental Treatment);

(2) an enrollment IPC is developed as described in §42.214 of this division [~~chapter~~]; and

(3) if the enrollment IPC includes residential habilitation, nursing, or specialized nursing:

(A) the service planning team determines whether the individual requires a service backup plan in accordance with §42.407 of this chapter (relating to Service Backup Plans); and

(B) that a service backup plan is developed if needed.

(k) Within ten business days after the service planning team meeting, the case manager must:

(1) complete an enrollment Individual Program Plan (IPP) as described in §42.215 of this ~~division~~ [chapter] (relating to Development of Enrollment Individual Program Plan (IPP));

(2) submit a request for enrollment to DADS for review as described in §42.216 of this ~~division~~ [chapter] (relating to DADS Review of Request for Enrollment) that includes the following:

(A) a copy of the completed enrollment IPC;

(B) a copy of the ID/RC Assessment form signed by a physician;

(C) a copy of the completed enrollment IPP;

(D) a copy of the adaptive behavior screening assessment;

(E) a copy of the Related Conditions Eligibility Screening Instrument form;

(F) a copy of the DBMD Summary of Services Delivered form (for pre-assessment services) with supporting documentation;

(G) a copy of the Verification of Freedom of Choice, Waiver Program form;

(H) a copy of the Non-Waiver Services form;

(I) a copy of the Documentation of Provider Choice form;

(J) a copy of the DADS DBMD Nursing Assessment form; and

(K) if applicable:

(i) Prior Authorization for Dental Services form;

(ii) Rationale for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(iii) Provider Agency Model Service Backup Plan form;

(iv) Specialized Nursing Certification form;

(v) copies of letters of denial from non-waiver resources; and

(vi) TAS Assessment and Authorization; and

(3) keep the original ID/RC Assessment, signed by a physician, in the individual's record.

(l) Within five business days after receiving a written notice from DADS approving or denying the individual's request for enrollment, the program provider must notify the individual or LAR of DADS decision. If DADS:

(1) approves the request for enrollment, the program provider must initiate DBMD Program services as described on the IPC; or

(2) denies the request for enrollment, the program provider must send the individual or LAR a copy of DADS written notice of denial.

(m) The program provider must not provide DBMD Program services to an individual until notified by DADS that the individual's request for enrollment is approved. If a program provider provides DBMD Program services to an individual before the effective date of service approved by DADS, DADS does not reimburse the program provider for those services.

(n) Within ten business days after receiving a written notice from DADS approving the individual's request for enrollment, the program provider must provide to the individual or LAR a copy of the approved enrollment IPC and IPP, and if a service backup plan is needed, a copy of the service backup plan.

*§42.213. Program Provider Cannot Ensure Individual's Health and Welfare.*

(a) DADS requests an individual or LAR to choose a different program provider if the program provider chosen by the individual or LAR informs DADS in writing that it cannot ensure the individual's health and welfare and is not willing to provide DBMD Program services to the individual.

(1) The program provider must include in the written notification to DADS:

(A) a description of the specific reasons the program provider cannot ensure the individual's health and welfare; and

(B) a statement that the program provider is not willing to provide DBMD Program services to the individual.

(2) DADS notifies the individual or LAR in writing that the program provider is not willing to provide DBMD Program services to the individual because the program provider cannot ensure individual's health and welfare. DADS includes with the notice a list of program providers as described in §42.211(c)(1) [~~§42.211(a)(1)~~] of this ~~division~~ [chapter] (relating to Written Offer of [a] DBMD Program Services [~~Vacancy~~]).

(b) If the individual is unable to find a program provider willing to serve the individual, DADS:

(1) denies enrollment in the DBMD Program as described in §42.241(a) of this ~~subchapter~~ [chapter] (relating to Denial of Request for Enrollment in the DBMD Program or of a DBMD Program Service); and

(2) if requested by the individual or LAR, adds the individual's name to the interest list as described in §42.202 (c) [~~§42.202(a)(2)~~] of this ~~subchapter~~ [chapter] (relating to DBMD Interest List).

*§42.214. Development of Enrollment Individual Plan of Care (IPC).*

(a) ~~A~~ [~~The~~] program provider must ensure that an individual's case manager convenes a service planning team meeting in which the service planning team [~~to develop, using person-directed planning, an enrollment IPC that includes:~~]:

(1) develops an enrollment IPC that specifies DBMD Program services;:

(A) identifies the type of each DBMD Program service to be provided to the individual;

(B) [~~(2)~~] specifies the number of units of each [the specified] DBMD Program service to be provided to the individual;

(C) if the enrollment IPC includes an adaptive aid, dental, a minor home modification, or respite, does not exceed the service

limits described in Subchapter F of this chapter (relating to Service Descriptions and Requirements);

(D) ~~[(3)]~~ specifies the frequency of each DBMD Program service to be provided to the individual ~~[the services]~~;

(E) ~~[(4)]~~ if the individual will receive TAS, includes the amounts for items and services to be paid through TAS identified in accordance with §42.212(e)(2) of this division ~~[chapter]~~ (relating to Process for Enrollment of an Individual);

(F) ~~[(5)]~~ includes an effective date of service that:

(i) ~~[(A)]~~ is at least 10 business days after submission of the enrollment IPC to DADS as described in §42.212(k)(2) of this division ~~[chapter]~~; and

(ii) ~~[(B)]~~ does not overlap with the end date of another Medicaid waiver program or another DADS-operated program described in the *DBMD Program Manual*, other than DAHS, in which the individual may have been enrolled; and

(G) ~~[(6)]~~ identifies ~~[a determination of]~~ whether the individual needs a service backup plan for residential habilitation, nursing, or specialized nursing ~~[services]~~ critical to the individual's health and safety; and ~~[-]~~

(2) ~~[(b)]~~ identifies the individual's ~~[In addition to developing the enrollment IPC, the service planning team must identify]~~ non-waiver resources using the Non-Waiver Services form.

~~[(c)]~~ For an enrollment IPC that includes adaptive aids, dental, minor home modifications, or respite, the program provider must ensure that the units for those services do not exceed the service limits described in Subchapter F of this chapter (relating to Service Descriptions and Requirements);

(b) ~~[(d)]~~ A ~~[The]~~ program provider must ensure that the DBMD Program services on the enrollment IPC:

(1) are necessary to protect the individual's health and welfare in the community;

(2) address at least one of the individual's related conditions or the additional disability that impairs independent functioning;

(3) supplement rather than replace the individual's natural supports and other non-waiver services and supports for which the individual is eligible;

(4) prevent the individual's admission to an institution;

(5) are the most appropriate type and amount of DBMD Program services to meet the individual's needs; and

(6) are cost effective.

(c) ~~[(e)]~~ A ~~[The]~~ program provider must:

(1) ensure that the enrollment IPC is signed and dated by each member of the service planning team;

(2) submit a copy of the enrollment IPC to DADS as described in §42.212(k) of this division ~~[chapter]~~; and

(3) maintain the original of the enrollment IPC in the individual's record.

(d) ~~[(f)]~~ A ~~[The]~~ program provider must maintain the following in the individual's record and provide copies to DADS upon request:

(1) current data obtained from standardized evaluations and formal assessments to support the individual's diagnoses in accordance with §42.201(3) and (4) of this subchapter ~~[chapter]~~ (relating to Eligibility Criteria);

(2) documentation, including assessments of the individual, that support the DBMD Program services recommended on the IPC; and

(3) documentation that no other sources are available for DBMD Program services recommended on the IPC.

§42.216. *DADS Review of Request for Enrollment.*

(a) DADS reviews a request for enrollment submitted by a program provider in accordance with §42.212(k) of this division (relating to Process for Enrollment of an Individual) to determine if:

(1) the individual meets the diagnostic eligibility criteria described in §42.201(2) - (4) of this subchapter (relating to Eligibility Criteria);

(2) the cost of the enrollment IPC meets the criteria described in §42.201(5) of this subchapter;

(3) the DBMD Program services specified in the enrollment IPC meet the requirements described in §42.214(a)(1) and (b)(1) - (6) ~~[(§42.214(d)(1) - (6))]~~ of this division (relating to Development of Enrollment Individual Plan of Care (IPC)); and

(4) the goals and objectives described in the IPP for each DBMD Program service in the IPC meet the criteria described in §42.215(2)(A) - (D) of this division (relating to Development of Enrollment Individual Program Plan (IPP)).

(b) To support the information in the enrollment IPC and IPP, DADS may request from the case manager:

(1) additional assessments and supporting documentation related to the individual's diagnosis; and

(2) the documentation described in §42.214(d) ~~[(§42.214(f))]~~ of this division.

(c) If DADS requests the information described in subsection (b) of this section, the case manager must submit the information to DADS within 10 calendar days after the date of the request.

(d) DADS notifies the program provider, in writing, that the individual's request for enrollment is approved if:

(1) the request for enrollment meets the requirements described in subsection (a)(1) - (4) of this section;

(2) the individual is Medicaid-eligible due to receipt of SSI cash benefits or is determined by HHSC to be financially eligible for Medicaid; and

(3) the individual is not enrolled in another ~~[a Medicaid]~~ waiver program or receiving a mutually excluded service as identified in the Mutually Exclusive Services table in Appendix V of ~~[other than the DBMD Program, or another DADS-operated program described in]~~ the *DBMD Program Manual* available at [www.dads.state.tx.us](http://www.dads.state.tx.us); ~~other than DAHS]~~.

(e) DADS notifies the individual's program provider, in writing, that the individual's request for enrollment is denied if:

(1) the request for enrollment does not meet the requirements described in subsection (a)(1) - (4) of this section;

(2) the individual is not Medicaid-eligible due to receipt of SSI cash benefits or is determined by HHSC not to be financially eligible for Medicaid; or

(3) the individual is enrolled in another ~~[a Medicaid]~~ waiver program or receiving a mutually excluded service as identified in the Mutually Exclusive Services table ~~[other than the DBMD]~~

Program or another DADS-operated program described in the *DBMD Program Manual*, other than DAHS].

(f) If DADS notifies the program provider that the individual's request for enrollment is denied, the program provider must send the individual or LAR written notice of the denial in accordance with §42.241(a)(2) of this subchapter (relating to Denial of Request for Enrollment in the DBMD Program or of a DBMD Program Service).

(g) If DADS determines a DBMD Program service specified in the enrollment IPC does not meet the requirements described in §42.214(a)(1) and (b)(1) - (6) [~~§42.214(d)(1) - (6)~~] of this division or §42.215(2)(A) - (D) of this division, DADS:

- (1) denies the service;
- (2) modifies and authorizes the IPC;
- (3) approves the individual's request for enrollment with the modified IPC; and
- (4) notifies the program provider, in writing, of the action taken.

(h) If DADS notifies the program provider of the denial of the DBMD Program service and of the modification of the enrollment IPC in accordance with subsection (f) of this section, the program provider must:

- (1) implement the modified enrollment IPC; and
- (2) send the individual or LAR written notice of the denial of a DBMD Program service in accordance with §42.241(a)(2) of this subchapter.

(i) DADS may approve the effective date of service as requested on the enrollment IPC or may modify the effective date of service.

(j) DADS verification of diagnostic eligibility and approval of the enrollment IPC is valid for the IPC period of the enrollment IPC.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lawrence Hornsby

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Department of Aging and Disability Services

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## DIVISION 3. REVIEW

### 40 TAC §42.221 - 42.222

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or

regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

*§42.221. Utilization Review of IPC by DADS.*

(a) At DADS discretion, DADS conducts utilization review of an IPC to determine if:

(1) the cost of the IPC meets the criteria described §42.201(5) of this subchapter (relating to Eligibility Criteria); and

(2) the DBMD Program services specified in the IPC meet the requirements described in §42.214(a)(1) and (b)(1) - (6) [~~§42.214(d)(1) - (6)~~] of this subchapter [chapter] (relating to Development of Enrollment Individual Plan of Care (IPC)).

(b) If requested by DADS, a [The] program provider must submit documentation supporting the IPC to DADS [as requested by DADS] within 10 business days after DADS request.

(c) If DADS determines that an IPC does not meet the criteria described in §42.201(5) of this subchapter, DADS notifies the program provider of such determination and sends written notice to the individual or LAR that the individual's DBMD Program services are proposed for termination and includes in the notice the individual's right to request a fair hearing in accordance with §42.251 of this subchapter (relating to Individual's Right to a Fair Hearing).

(d) [(e)] If DADS determines that the IPC meets the criteria described in §42.201(5) of this subchapter but one or more DBMD Program services [a DBMD Program service] specified in the IPC does not meet the requirements described in §42.214(a)(1) and (b)(1) - (6) [~~§42.214(d)(1) - (6)~~] of this subchapter [chapter], DADS:

- (1) denies or reduces the service, as appropriate;
- (2) modifies and authorizes the IPC; and
- (3) notifies the program provider, in writing, of the action taken.

(e) [(d)] If DADS notifies the program provider of the denial or reduction of a DBMD Program service and of the modification of the IPC in accordance with subsection (d) [(e)] of this section, the program provider must send the individual or LAR written notice and provide services in accordance with:

(1) §42.241(b)(2) of this subchapter [chapter] (relating to Denial of Request for Enrollment in the DBMD Program or of a DBMD Program Service); or

(2) §42.243(b) and (c) of this subchapter [chapter] (relating to Reduction of a DBMD Program Service [Services]).

*§42.222. Annual Review and Reinstatement of Lapsed Diagnostic Eligibility.*

(a) Annual Review of Diagnostic Eligibility.

(1) To establish that an individual continues to meet the diagnostic eligibility criteria described in §42.201(2) - (4) of this subchapter [chapter] (relating to Eligibility Criteria), a case manager [program provider] must submit a current ID/RC [MR/RC] Assessment to DADS in accordance with the timeframe [timeframes]

described in §42.223(b)(3) of this division [~~§42.223(b)(1) and (2)(D) of this chapter~~] (relating to Periodic Review and Update of IPC and IPP).

(2) If requested by DADS, the case manager [~~program provider~~] must submit assessments and supporting documentation related to the individual's diagnosis in accordance with the timeframe described in §42.223(b)(5) of this division.

(3) DADS reviews the ID/RC [~~MR/RC~~] Assessment and notifies the program provider of the approval or denial of the individual's diagnostic eligibility.

(4) DADS verification of diagnostic eligibility is valid for the IPC period of the enrollment IPC.

(b) Lapsed [~~Reinstatement of~~] Diagnostic Eligibility.

(1) DADS considers an individual's diagnostic eligibility to be lapsed if the case manager [~~program provider~~] does not submit a current ID/RC [~~MR/RC~~] Assessment before the end of the IPC period.

(2) DADS does not pay a program provider for DBMD Program services provided during [~~for~~] a period of time [~~during which~~] an individual's diagnostic eligibility is lapsed unless the program provider requests and is granted a reinstatement of diagnostic eligibility.

(3) To request reinstatement of diagnostic eligibility, a [~~the~~] program provider must submit to DADS a current ID/RC [~~MR/RC~~] Assessment.

(4) DADS does not grant a request for reinstatement of diagnostic eligibility:

(A) if the program provider does not submit a current ID/RC [~~MR/RC~~] Assessment for the individual in accordance with paragraph (3) of this subsection [~~(a)(1) of this section~~];

(B) for a period of time for which [~~if~~] DADS denied diagnostic eligibility [~~for the period of time for which the program provider has requested the reinstatement of diagnostic eligibility~~]; or

(C) for a period of time during which the individual is not financially eligible for Medicaid as required by §42.201(1) of this subchapter [~~chapter~~].

(5) If DADS grants a reinstatement of an individual's diagnostic eligibility, the reinstatement will be for a period of not more than 180 calendar days before the date DADS receives the completed ID/RC [~~MR/RC~~] Assessment submitted by the program provider in accordance with paragraph (3) of this subsection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## DIVISION 5. DENIAL, SUSPENSION, REDUCTION, AND TERMINATION

## 40 TAC §§42.241, 42.243, 42.249

### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

*§42.241. Denial of Request for Enrollment in the DBMD Program or of a DBMD Program Service.*

(a) Denial of an Individual's Request for Enrollment.

(1) DADS denies an individual's request for enrollment in the DBMD Program if:

(A) the individual does not meet the eligibility criteria described in §42.201 of this subchapter [~~chapter~~] (relating to Eligibility Criteria);

(B) the individual or LAR fails to submit a completed Medicaid application to HHSC within one calendar year after the date of the case manager's initial face-to-face, in-home visit; or

(C) the individual cannot obtain services from at least one program provider.

(2) DADS sends a written notice of denial for enrollment in the DBMD Program to the program provider that the program provider, upon receipt, must send to the individual or LAR, copying the FMSA [~~CDSA~~] if applicable.

(3) If the individual or LAR requests a fair hearing, the program provider is not required to provide services to the individual while the appeal is pending.

(b) Denial of a DBMD Program service.

(1) DADS denies a DBMD Program service requested on the individual's IPC if DADS determines, following utilization review conducted as described in §42.221 of this subchapter [~~chapter~~] (relating to Utilization Review of IPC by DADS), that the service does not meet the requirements described in §42.214(a)(1) and (b)(1) - (6) [~~§42.214(d)(1) - (6)~~] of this subchapter [~~chapter~~] (relating to Development of Enrollment Individual Plan of Care (IPC)).

(2) DADS sends a written notice with the effective date of the denial to the program provider that the program provider, upon receipt but no later than 12 calendar days before the effective date of denial, must send to the individual or LAR, copying the FMSA [~~CDSA~~], if applicable.

(3) If the service denied by DADS is requested:

(A) on an enrollment IPC submitted by the program provider in accordance with §42.212 of this subchapter [~~chapter~~] (re-



lating to Process for Enrollment of an Individual) and the individual or LAR requests a fair hearing, the program provider is not required to provide the service while the appeal is pending; or

(B) on a revision or renewal IPC submitted by the program provider in accordance with §42.223 of this subchapter [chapter] (relating to Periodic Review and Update of IPC and IPP) and the individual or LAR requests a fair hearing before the effective date of denial specified in the written notice, the program provider:

(i) is not required to provide the service while the appeal is pending if the service was not authorized by DADS on the prior IPC; or

(ii) must provide the service at the previously approved amount or level while the appeal is pending if the service was authorized by DADS on the prior IPC.

*§42.243. Reduction of a DBMD Program Service.*

(a) DADS reduces an individual's DBMD Program services if, during utilization review of an individual's IPC conducted as described in §42.221 of this subchapter [chapter] (relating to Utilization Review of IPC by DADS), DADS determines that the amount or level of a service on the individual's IPC does not meet the requirements described in §42.214(a)(1) and (b)(1) - (6) [§42.214(d)(1) - (6)] of this subchapter [chapter] (relating to Development of Enrollment Individual Plan of Care (IPC)).

(b) DADS sends a written notice with the effective date of the reduction to the program provider that the program provider, upon receipt but no later than 12 calendar days before the effective date of reduction, must send to the individual or LAR, copying the FMSA [CDSA] if applicable.

(c) If the individual or LAR requests a fair hearing before the effective date of the reduction specified in the written notice, the program provider must provide the DBMD Program service at the amount or level authorized by DADS on the prior IPC while the appeal is pending.

*§42.249. Individual Whose DBMD Program Services Are Terminated May Request Name be Added to DBMD Interest List.*

If DADS terminates an individual's DBMD Program services, the individual or LAR may request the individual's name be placed on the DBMD interest list [for DBMD Program services] in accordance with §42.202(b) [§42.202(a)(1)] of this subchapter [chapter] (relating to DBMD Interest List).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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**SUBCHAPTER C. PROGRAM PROVIDER ENROLLMENT**

**40 TAC §42.301**

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

*§42.301. Program Provider Compliance with Rules [Providers].*

A program provider [provide] must comply with:

(1) this chapter;

(2) Chapter 41 of this title (relating to Consumer Directed Services Option); and

(3) Chapter 49 of this title (relating to Contracting for Community Services).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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**SUBCHAPTER D. ADDITIONAL PROGRAM PROVIDER PROVISIONS**

**40 TAC §42.402, §42.403**

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall

adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§42.402. *Staff Qualifications.*

(a) A program provider must employ a program director who is responsible for the program provider's day-to-day operations. The program director must:

(1) have a minimum of one year of paid experience in community programs planning and providing direct services to individuals with deafness, blindness, or multiple disabilities and have a master's degree in a health and human services related field;

(2) have a minimum of two years of paid experience in community programs planning and providing direct services to individuals with deafness, blindness, or multiple disabilities, and have a bachelor's degree in a health and human services related field; or

(3) have been the program director for a DBMD Program provider on or before June 15, 2010.

(b) A program provider must ensure that a case manager:

(1) has:

(A) a bachelor's degree in a health and human services related field and a minimum of two years of experience in the delivery of direct services to individuals with disabilities;

(B) an associate's degree in a health and human services related field and a minimum of four years of experience providing direct services to individuals with disabilities; or

(C) a high school diploma or certificate recognized by a state as the equivalent of a high school diploma and a minimum of six years of experience providing direct services to individuals with disabilities; and

(2) either:

(A) is fluent in the communication methods used by an individual to whom the case manager is assigned (for example American sign language, tactile symbols, communication boards, pictures, and gestures); or

(B) within six months after being assigned to an individual, becomes fluent in the communication methods used by the individual.

(c) For purposes of subsection (d) of this section and consistent with Texas Government Code, §531.0973, "deafblind-related course work" means educational courses designed to improve a person's:

(1) knowledge of deafblindness and its effect on learning;

(2) knowledge of the role of intervention and ability to facilitate the intervention process;

(3) knowledge of areas of communication relevant to deafblindness, including methods, adaptations, and use of assistive technology, and ability to facilitate the development and use of communication skills for a person with deafblindness;

(4) knowledge of the effect that deafblindness has on a person's psychological, social, and emotional development and ability to facilitate the emotional well-being of a person with deafblindness;

(5) knowledge of and issues related to sensory systems and ability to facilitate the use of the senses;

(6) knowledge of motor skills, movement, orientation, and mobility strategies and ability to facilitate orientation and mobility skills;

(7) knowledge of the effect that additional disabilities have on a person with deafblindness and the ability to provide appropriate support; or

(8) professionalism and knowledge of ethical issues relevant to the role of an intervener.

(d) A program provider must ensure that:

(1) an intervener:

(A) is at least 18 years of age;

(B) is not:

(i) the spouse of the individual to whom the intervener is assigned; or

(ii) if the individual is under 18 years of age, a parent of the individual to whom the intervener is assigned;

(C) holds a high school diploma or a high school equivalency certificate;

(D) has a minimum of two years of experience working with individuals with developmental disabilities; and

(E) has the ability to proficiently communicate in the functional language of the individual to whom the intervener is assigned;

(2) an intervener I:

(A) meets the requirements for an intervener as described in paragraph (1) of this subsection;

(B) has a minimum of six months of experience working with persons who have deafblindness or function as persons with deafblindness;

(C) has completed a minimum of eight semester credit hours in deafblind-related course work at a college or university accredited by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education;

(D) a one-hour practicum in deafblind-related course work at a college or university accredited by a state agency or a non-governmental entity recognized by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education;

(3) an intervener II:

(A) meets the requirements of an intervener I as described in paragraph (2)(A), (C), and (D) of this subsection;

(B) has a minimum of nine months of experience working with persons who have deafblindness or function as persons with deafblindness; and

(C) has completed an additional 10 semester credit hours in deafblind-related course work at a college or university accredited by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education; and

(4) an intervener III:

(A) meets the requirements of an intervener II as described in paragraph (3)(A) of this subsection;

(B) has a minimum of one year of experience working with persons with deafblindness; and

(C) holds an associate's or bachelor's degree in a course of study with a focus on deafblind-related course work from a college or university accredited by:

(i) a state agency recognized by the United States Department of Education; or

(ii) a non-governmental entity recognized by the United States Department of Education;

(e) A program provider must ensure that a service provider who interacts directly with an individual is able to communicate with the individual.

(f) A program provider must ensure that a service provider of a therapy described in §42.632(a) of this chapter (relating to Therapies) is licensed by the State of Texas as described in §42.632(b) of this chapter.

(g) A program provider must ensure that a [A] service provider of employment assistance or a service provider of supported employment:

(1) is ~~[must be]~~ at least 18 years of age;[;]

(2) is not:

(A) the spouse ~~[be the LAR]~~ of the individual; or ~~[receiving employment assistance or supported employment, and have:]~~

(B) a parent of the individual if the individual is under 18 years of age; and

(3) has:

(A) ~~[(1)]~~ a bachelor's degree in rehabilitation, business, marketing, or a related human services field with six months of paid or unpaid experience providing services to people with disabilities;

(B) ~~[(2)]~~ an associate's degree in rehabilitation, business, marketing, or a related human services field with one year of paid or unpaid experience providing services to people with disabilities; or

(C) ~~[(3)]~~ a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, with two years of paid or unpaid experience providing services to people with disabilities.

(h) Documentation of the experience required by subsection (g) of this section must include:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(i) A program provider must ensure that a service provider not required to meet the other education or experience requirements described in this section:

(1) is 18 years of age or older;

(2) has:

(A) a high school diploma;

(B) a certificate recognized by a state as the equivalent of a high school diploma; or

(C) the following:

(i) documentation of a proficiency evaluation of experience and competence to perform job tasks including an ability to provide the required services needed by the individual as demonstrated through a written competency-based assessment; and

(ii) at least three personal references from persons not related by blood that evidence the person's ability to provide a safe and healthy environment for the individual; and

(3) except for a service provider of chore services, either:

(A) is fluent in the communication methods used by the individual to whom the service provider is assigned (for example American sign language, tactile symbols, communication boards, pictures, and gestures); or

(B) has the ability to become fluent in the communication methods used by an individual within three months after being assigned to the individual.

(j) The program provider must ensure that:

(1) a vehicle in which a service provider transports an individual has a valid Vehicle Identification Certificate of Inspection, in accordance with state law; and

(2) a service provider who transports an individual in a vehicle has:

(A) a current Texas driver's license; and

(B) vehicle liability insurance, in accordance with state law.

(k) A service provider:

(1) must not be:

(A) the parent of an individual if the individual is under 18 years of age; or

(B) the spouse of an individual;

(2) must not, if an individual is an adult, be a relative or guardian of the individual to whom the service provider is providing:

(A) assisted living;

(B) case management;

(C) behavioral support;

(D) dental treatment;

(E) dietary services;

(F) FMS, if the individual is participating in the CDS option;

(G) occupational therapy;

(H) orientation and mobility;

(I) physical therapy;

(J) speech, language, audiology therapy;

(K) support consultation, if the individual is participating in the CDS option; or

(L) TAS; and

(3) may be, if an individual is an adult, a relative or guardian of the individual to whom the service provider is providing:

- (A) adaptive aids;
- (B) chore services;
- (C) day habilitation;
- (D) employment assistance;
- (E) intervener;
- (F) minor home modifications;
- (G) nursing;
- (H) residential habilitation;
- (I) respite; or
- (J) supported employment.

(l) The program provider must maintain documentation in a service provider's employment, contract, or personal service agreement file that the service provider meets the requirements of this section.

*§42.403. Training.*

(a) A program provider must ensure that a program director and all service providers complete a general orientation curriculum before assuming job duties and annually while holding the position of program director or service provider. The general orientation curriculum must include training in:

- (1) the rights of an individual;
- (2) confidentiality;
- (3) abuse, neglect, and exploitation; and
- (4) the program provider's complaint process.

(b) A program provider must ensure that, before assuming job duties, a program director, an intervener, and a service provider of licensed assisted living, licensed home health assisted living, case management, day habilitation, employment assistance, residential habilitation, respite, and supported employment [a service other than ~~behavioral support, chore services, orientation and mobility, nursing, specialized nursing, or a therapy~~] completes and has current documentation of completion of hands-on skills training in:

- (1) cardiopulmonary resuscitation (CPR);
- (2) first aid; and
- (3) choking prevention.

(c) A program provider must:

(1) ensure that a service provider required to complete hands-on skills training in accordance with subsection (b) of this section periodically updates hands-on skills training in accordance with guidelines of the training organization; and

(2) maintain a copy of current training documentation in the service provider's file.

(d) A program provider must ensure that a person who is a program director or case manager completes, within six months after assuming job duties:

(1) the DBMD Program case management training provided by DADS or training developed by the program provider that addresses the following elements from the DADS DBMD Program case management curriculum;

(A) the DBMD Program service delivery model:

(i) the role of the case manager and DBMD Program provider;

(ii) the role of the service planning team;

(iii) person-centered [~~person-directed~~] planning;

and

(iv) the CDS option;

(B) DBMD Program services, including how these services:

(i) complement other Medicaid services;

(ii) supplement family supports and non-waiver services available in the individual's community; and

(iii) prevent institutionalization;

(C) DBMD Program process and procedures for:

(i) eligibility and enrollment;

(ii) service planning, service authorization, and program plans;

(iii) access to non-waiver resources; and

(iv) complaint procedures and the fair hearing process; and

(D) rules, policies, and procedures about:

(i) prevention of abuse, neglect, and exploitation of an individual;

(ii) reporting abuse, neglect, and exploitation to local and state authorities; and

(iii) financial improprieties toward an individual; and

(2) the Service Provider Curriculum required by DADS as described in subsection (e) of this section, if providing direct services to an individual.

(e) A program provider must ensure a service provider of a service other than behavioral support, chore services, orientation and mobility, or a therapy:

(1) completes, within 90 calendar days after assuming job duties, the Service Provider Training provided by DADS or training developed by the program provider that addresses the following elements from the DADS Service Provider Training curriculum:

(A) methods and strategies for communication;

(B) active participation in home and community life;

(C) orientation and mobility;

(D) behavior as communication;

(E) causes and origins of deafblindness; and

(F) vision, hearing, and the functional implications of deafblindness; and

(2) who has not completed the Service Provider training is accompanied at all times while providing services to an individual by a service provider who has completed Service Provider Training.

(f) A program provider must ensure a service provider of a service other than behavioral support, case management, chore services, orientation and mobility, nursing, specialized nursing, or a therapy, be-

fore providing direct services to an individual, annually while holding the position of service provider, and when the individual's needs change, completes specific training that includes:

(1) the special needs of the individual, including the individual's:

- (A) methods of communication;
- (B) specific visual and audiological loss; and
- (C) adaptive aids; and

(2) managing challenging behavior, including training in:

- (A) prevention of aggressive behavior; and
- (B) de-escalation techniques; and

(3) instruction in the individual's home with full participation by the individual, LAR, or other involved persons, as appropriate, concerning the specific tasks to be performed.

(g) If a program provider develops training based on DADS curriculum as described in subsections (d)(1) or (e)(1) of this section, the program provider must ensure that the instructor who delivers the training has completed the appropriate training provided by DADS.

(h) The program provider must ensure a service provider performing a delegated task is trained before providing direct services to an individual, annually, and when the individual's needs change, and supervised by a physician or nurse, as appropriate, in compliance with applicable state law and rules.

(i) The program provider must document the training described in subsections (d) and (e) of this section by a certificate or form letter that includes the:

- (1) name of the person who received the training;
- (2) date(s) the training was completed; and
- (3) name of the person certifying the completion of the course.

(j) A program provider must ensure compliance with the training and training documentation requirements described in §42.408(c)(8) and (9) of this subchapter (relating to Protective Devices).

(k) A program provider must ensure compliance with the training and training documentation requirements described in §42.409(d)(3) of this subchapter (relating to Restraints).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 438-5645



## CHAPTER 45. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §45.103, concerning definitions, in Subchapter A, General Provisions; amendments to §45.201, concerning eligibility criteria; §45.211, concerning written offer of a CLASS program vacancy; §45.212, concerning process for enrollment of an individual; §45.214, concerning development of enrollment IPC; §45.216, concerning DADS review of an enrollment IPC; §45.223, concerning renewal and revision of an IPC; §45.225, concerning utilization review of an IPC by DADS; new §45.202, concerning CLASS interest list; and the repeal of §45.202 concerning interest list, in Subchapter B, Eligibility, Enrollment, and Review; amendments to §45.403, concerning denial of a CLASS program service; and §45.405, concerning reduction of a CLASS program service, in Subchapter D, Transfer, Denial, Suspension, Reduction, and Termination of Services, in Chapter 45, Community Living Assistance and Support Services.

### BACKGROUND AND PURPOSE

The proposed rules describe DADS current practices regarding maintaining the CLASS interest list and making and withdrawing offers of CLASS Program services. The proposed rules require DADS to keep the name of a military family member who resides out of state on the CLASS interest list for up to one year after the military member's active duty ends. Ordinarily, a person who resides out of state is not permitted to be on the CLASS interest list. The proposed rules also allow a person other than the individual or legally authorized representative (LAR) to request that an individual's name be added to the CLASS interest list, allow a person to make a written request to DADS to add an individual's name to the interest list, allow DADS to reinstate an individual's name to the interest list with the original request date if a request to reinstate is received by DADS within 90 calendar days after the individual's name was removed from the list, and allow DADS to withdraw an offer of CLASS Program services if the appropriate forms are not timely submitted to DADS.

For clarity and accuracy, the proposed rules reference Appendix B of the CLASS Program waiver application regarding an individual's financial eligibility, instead of describing the financial eligibility criteria, and reference the Mutually Exclusive Services table in Appendix III of the CLASS Provider Manual, instead of listing services an individual may not receive to be eligible for the CLASS Program.

The proposed rules add definitions of "military member," "military family member," and "nursing facility," terms associated with the CLASS interest list and offering CLASS Program services.

The proposed rules clarify, in the definition of "individual plan of care (IPC)," DADS expectation that an IPC is developed using person-centered planning. The proposed rules also add a definition of "person-centered planning" that is consistent with the definition of that term for other DADS waiver programs and, for clarity, add a definition of "habilitation plan." The proposed rules clarify the requirements of a service planning team developing, revising, or renewing an IPC for the CLASS Program services identified in the IPC. The proposed rules also clarify that DADS reviews an IPC to determine if (1) the IPC meets the requirement that the IPC cost for CLASS Program services is at or below \$114,736.07; (2) the CLASS Program services specified in the IPC are within the service limits described in the rules; (3) an adaptive aid or minor home modification on the IPC meets the requirements in Subchapter F; and (4) the services on the IPC are necessary to protect the individual's health and welfare

in the community; address the individual's related condition; are not available to the individual through any other source, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports; are the most appropriate type and amount of CLASS Program services to meet the individual's needs; and are cost effective.

The proposed rules amend the definition of "natural supports" for consistency with the definition of that term for other waiver programs.

The proposed rules update the references to the requirements for the CLASS Program services, add the updated references where needed, and use the updated references instead of repeating a list of the requirements. The proposed rules delete a reference to repealed rules related to requests for an exception to service limits.

The proposed rules clarify that the signature of the individual or LAR on a Verification of Freedom of Choice form designates the individual's choice for enrollment in the CLASS Program over enrollment in the Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) Program.

The proposed rules also make editorial changes for clarity, consistency, and accuracy.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §45.103 amends the definition of "IPC," "IPC period," "IPP," "natural supports," and "prevocational services." The proposed amendment adds a definition of "habilitation plan," "military member," "military family member," "nursing facility," and "person-centered planning."

The proposed amendment to §45.201 revises the description of how an individual meets financial eligibility for Medicaid by referencing Appendix B of the CLASS Program waiver application approved by CMS and available at [www.dads.state.tx.us](http://www.dads.state.tx.us). The proposed amendment also revises the eligibility requirements by adding that an individual may not receive a mutually exclusive service identified in the Mutually Exclusive Services table in Appendix III of the CLASS Provider Manual.

The proposed repeal of §45.202, containing requirements related to the CLASS interest list, allows for proposed new §45.202 on the same topic.

The proposed new §45.202 states that DADS maintains an interest list that contains the names of individuals interested in receiving CLASS Program services. The proposed new rule describes the process a person follows to add an individual's name to the CLASS interest list. The proposed new rule states that DADS adds an individual's name to the interest list if the individual resides in Texas. The proposed new rule describes how an interest list request date for the CLASS interest list is assigned to an individual added to the interest list, including that the name of an individual determined diagnostically or functionally ineligible for another DADS waiver program is added to the list with the interest list request date for the other waiver program or an existing interest list request date for the CLASS Program, whichever is the earliest date. The proposed new rule also states that an individual under 22 years of age residing in a nursing facility is added to the list with an interest list request date that is the date of admission to the nursing facility. The proposed new rule describes the conditions under which an individual's name may be removed from the CLASS interest list. The proposed new rule describes the conditions under which an individual's name may

be reinstated on the CLASS interest list after being removed, how an interest list request date is assigned when a name is reinstated on the interest list, and the notification the individual or LAR receives from DADS regarding the reinstatement.

The proposed amendment to §45.211 changes the title from "Written Offer of a CLASS Program Vacancy" to "Written Offer of CLASS Program Services." The proposed amendment specifies that an individual whose registration date is earliest on the CLASS Program interest list receives a written offer of CLASS Program services unless the individual is a military family member. The proposed amendment adds "is residing in a nursing facility and requesting CLASS Program services" (instead of "is on the CLASS Program interest list and is receiving institutional services") as a condition for receiving a written offer of CLASS Program services when that individual's registration date is not the earliest on the CLASS Program interest list. The proposed amendment replaces "CLASS Program vacancy" with "CLASS Program services" in the context of making an offer. The proposed amendment replaces "returning" with "ensuring" to describe the requirement for an individual to submit the required forms when DADS offers CLASS Program services. The proposed amendment adds the Applicant Acknowledgement form as a form to be submitted to DADS. The proposed amendment replaces "within 30 days" with "and postmarked or faxed no later than 60 calendar days after the date of the written offer" to describe the amount of time allowed for an individual to return forms to DADS. The proposed amendment states that upon timely receipt of the required forms completed by the individual or LAR, DADS notifies the CMA and DSA selected by the individual or LAR. The proposed amendment changes "receiving institutional services and moves out of the ICF/MR" to "residing in a nursing facility and discharged from the nursing facility" in describing the circumstances under which an offer of CLASS Program services may be withdrawn.

The proposed amendment to §45.212 clarifies that an individual chooses enrollment in the CLASS Program over enrollment in the ICF/IID Program. The proposed amendment updates a section title proposed for amendment. The proposed amendment clarifies what DADS reviews on a proposed enrollment IPC.

The proposed amendment to §45.214 removes a reference to the CLASS Provider Manual because a description of the habilitation plan is not in the manual. The proposed amendment is reformatted to describe the CLASS Program service limits and requirements of an enrollment IPC and to require that an individual program plan be developed for each CLASS Program service the individual will receive. The proposed amendment includes minor grammatical changes. The proposed amendment adds a reference to another rule in describing the process DADS follows when authorizing the enrollment IPC.

The proposed amendment to §45.216 updates rule references governing requirements for a proposed enrollment IPC and for CLASS Program services on an IPC.

The proposed amendment to §45.223 updates rule references governing requirements for CLASS Program services on an IPC.

The proposed amendment to §45.225 updates rule references governing requirements for CLASS Program services on the IPC.

The proposed amendment to §45.403 updates rule references governing requirements for CLASS Program services on the IPC.

The proposed amendment to §45.405 updates rule references governing requirements for CLASS Program services on the IPC. The proposed amendment deletes a reference to repealed rules related to requests for an exception to service limits. The proposed amendment also makes editorial changes.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments, new section, and repeal are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments, new section, and repeal will not have an adverse economic effect on small businesses or micro-businesses.

#### PUBLIC BENEFIT AND COSTS

Kristi Jordan, Deputy Commissioner, has determined that, for each year of the first five years the amendments, new section, and repeal are in effect, the public will benefit from rules that describe DADS current practices regarding maintaining the CLASS interest list and making and withdrawing offers of CLASS Program services, and describe the requirements for developing plans of care using the person-centered planning process. Ms. Jordan anticipates that there will not be an economic cost to persons who are required to comply with the amendments, new section, and repeal. The amendments, new section, and repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Debra Campbell at (512) 438-5645 in DADS Long-Term Services and Supports/Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R01, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R01" in the subject line.

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §45.103

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive com-

missioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §45.103. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual, based on the person's:

(A) interactions with the individual;

(B) availability to the individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(2) Adaptive aid--An item or service that enables an individual to retain or increase the ability to perform ADLs or perceive, control, or communicate with the environment in which the individual lives, and:

(A) is included in the list of adaptive aids in the *CLASS Provider Manual*; or

(B) is the repair and maintenance of an adaptive aid on such list that is not covered by a warranty.

(3) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.

(4) Adaptive behavior level--The categorization of an individual's functioning level based on a standardized measure of adaptive behavior. Four levels are used ranging from mild limitations in adaptive skills (I) through profound limitations in adaptive skills (IV).

(5) Adaptive behavior screening assessment--A standardized assessment used to determine an individual's adaptive behavior level, and conducted using one of the following assessment instruments:

(A) American Association of Intellectual and Developmental Disabilities (AAIDD) Adaptive Behavior Scales (ABS);

(B) Inventory for Client and Agency Planning (ICAP);

(C) Scales of Independent Behavior--Revised (SIB-R);

or

(D) Vineland Adaptive Behavior Scales, Second Edition (Vineland-II).

(6) ADL--Activity of daily living.

(7) Aquatic therapy--A service that involves a low-risk exercise method done in water to improve an individual's range of motion, flexibility, muscular strengthening and toning, cardiovascular endurance, fitness, and mobility.

(8) Auditory integration training/auditory enhancement training--Specialized training that assists an individual to cope with hearing dysfunction or over-sensitivity to certain frequency ranges of sound by facilitating auditory processing skills and exercising the middle ear and auditory nervous system.

(9) Behavior support plan--A comprehensive, individualized written plan based on a current functional behavior assessment that includes specific objectives and behavioral techniques designed to teach or increase adaptive skills and decrease or eliminate target behaviors.

(10) Behavioral support--Specialized interventions that assist an individual in increasing adaptive behaviors and replacing or modifying challenging or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in the community and which consist of the following activities:

- (A) conducting a functional behavior assessment;
- (B) developing an individualized behavior support plan;
- (C) training of and consultation with an individual, family member, or other persons involved in the individual's care regarding the implementation of the behavior support plan;
- (D) monitoring and evaluation of the effectiveness of the behavior support plan;
- (E) modifying, as necessary, the behavior support plan based on monitoring and evaluation of the plan's effectiveness; and
- (F) counseling with and educating an individual, family members, or other persons involved in the individual's care about the techniques to use in assisting the individual to control challenging or socially unacceptable behaviors.

(11) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(12) Case management--A service that assists an individual in the following:

- (A) assessing the individual's needs;
- (B) enrolling into the CLASS Program;
- (C) developing the individual's IPC;
- (D) coordinating the provision of CLASS Program services;
- (E) monitoring the effectiveness of the CLASS Program services and the individual's progress toward achieving the outcomes identified for the individual;
- (F) revising the individual's IPC, as appropriate;
- (G) accessing non-CLASS Program services;
- (H) resolving a crisis that occurs regarding the individual; and
- (I) advocating for the individual's needs.

(13) Catchment area--As determined by DADS, a geographic area composed of multiple Texas counties.

(14) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(15) CDSA--FMSEA.

(16) CMA--Case management agency. A program provider that has a contract with DADS to provide case management.

(17) CLASS Program--The Community Living Assistance and Support Services Program.

(18) CMS--The Centers for Medicare and Medicaid Services. CMS is the agency within the United States Department of Health and Human Services that administers Medicare and Medicaid programs.

(19) Cognitive rehabilitation therapy--A service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

(B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(20) Competitive employment--Employment that pays an individual at least the minimum wage if the individual is not self-employed.

(21) Continued family services--Services provided to an individual 18 years of age or older who resides with a support family, as described in §45.531 of this chapter (relating to Support Family Requirements), that allow the individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. The individual must be receiving support family services immediately before receiving continued family services. Continued family services consist of services described in §45.533 of this chapter (relating to Support Family Duties).

(22) Contract--A provisional contract that DADS enters into in accordance with §49.208 of this chapter (relating to Provisional Contract Application Approval) that has a stated expiration date or a standard contract that DADS enters into in accordance with §49.209 of this chapter (relating to Standard Contract) that does not have a stated expiration date.

(23) DADS--The Department of Aging and Disability Services.

(24) Denial--An action taken by DADS that:

(A) rejects an individual's request for enrollment into the CLASS Program;

(B) disallows a CLASS Program service requested on an IPC that was not authorized on the prior IPC; or

(C) disallows a portion of the amount or level of a CLASS Program service requested on an IPC that was not authorized on the prior IPC.

(25) Dental treatment--A service that:

(A) consists of the following:

(i) emergency dental treatment, which is procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures that are required to prevent the imminent



loss of teeth; and treatment of injuries to the teeth or supporting structures;

(ii) routine preventative dental treatment, which is examinations, x-rays, cleanings, sealants, oral prophylaxes, and topical fluoride applications;

(iii) therapeutic dental treatment, which includes fillings, scaling, extractions, crowns, pulp therapy for permanent and primary teeth; restoration of carious permanent and primary teeth; maintenance of space; and limited provision of removable prostheses when masticatory function is impaired, when an existing prosthesis is unserviceable, or when aesthetic considerations interfere with employment or social development;

(iv) orthodontic dental treatment, which is procedures that include treatment of retained deciduous teeth; cross-bite therapy; facial accidents involving severe traumatic deviations; cleft palates with gross malocclusion that will benefit from early treatment; and severe, handicapping malocclusions affecting permanent dentition with a minimum score of 26 as measured on the Handicapping Labio-lingual Deviation Index; and

(v) dental sedation, which is sedation necessary to perform dental treatment including non-routine anesthesia, (for example, intravenous sedation, general anesthesia, or sedative therapy prior to routine procedures) but not including administration of routine local anesthesia only; and

(B) does not include cosmetic orthodontia.

(26) Dietary services--The provision of nutrition services, as defined in Texas Occupations Code, Chapter 701.

(27) Direct services--CLASS Program services other than case management, FMS, support consultation, support family services, continued family services, or transition assistance services.

(28) DSA--Direct services agency. A program provider that has a contract with DADS to provide direct services.

(29) DFPS--The Department of Family and Protective Services.

(30) Employment assistance--Assistance provided to an individual to help the individual locate competitive employment in the community.

(31) Enrollment IPC--The first IPC developed for an individual upon enrollment into the CLASS Program.

(32) FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(33) FMSA--Financial management services agency. An entity, as defined in §41.103 of this title, that provides FMS.

(34) Functional behavior assessment--An evaluation that is used to determine the underlying function or purpose of an individual's behavior, so an effective behavior support plan can be developed.

(35) Habilitation--A service that allows an individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Habilitation services consist of the following:

(A) habilitation training, which is interacting face-to-face with an individual who is awake to train the individual in the following activities:

(i) self-care;

(ii) personal hygiene;

(iii) household tasks;

(iv) mobility;

(v) money management;

(vi) community integration;

(vii) use of adaptive equipment;

(viii) management of caregivers;

(ix) personal decision making;

(x) interpersonal communication;

(xi) reduction of challenging behaviors;

(xii) socialization and the development of relationships;

(xiii) participating in leisure and recreational activities;

(xiv) use of natural supports and typical community services available to the public;

(xv) self-administration of medication; and

(xvi) strategies to restore or compensate for reduced cognitive skills;

(B) habilitation ADLs, which are:

(i) interacting face-to-face with an individual who is awake to assist the individual in the following activities:

(I) self-care;

(II) personal hygiene;

(III) ambulation and mobility;

(IV) money management;

(V) community integration;

(VI) use of adaptive equipment;

(VII) self-administration of medication;

(VIII) reinforce any therapeutic goal of the individual;

(IX) provide transportation to the individual; and

(X) protect the individual's health, safety and security;

(ii) interacting face-to-face or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities that does not involve interacting face-to-face with an individual:

(I) shopping for the individual;

(II) planning or preparing meals for the individual;

(III) housekeeping for the individual;

(IV) procuring or preparing the individual's medication; or

(V) arranging transportation for the individual;

and

(C) habilitation delegated, which is tasks delegated by a registered nurse to a service provider of habilitation in accordance with 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks By Registered Professional Nurses to Unlicensed Personnel For Clients With Acute Conditions Or In Acute Care Environments) or Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegations In Independent Living Environments For Clients With Stable and Predictable Conditions).

(36) Habilitation plan--A written plan developed by an individual's service planning team and documented on a DADS form that describes the type and frequency of habilitation activities to be performed by a service provider.

(37) [(36)] HHSC--The Texas Health and Human Services Commission.

(38) [(37)] Hippotherapy--The provision of therapy that:

(A) involves an individual interacting with and riding on horses;

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual; and

(C) is provided by two service providers at the same time, as described in §45.803(d)(11) of this chapter (relating to Qualifications of DSA Staff Persons).

(39) [(38)] ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided and that is:

(A) licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252; or

(B) certified by DADS.

(40) [(39)] ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(41) [(40)] ICF/MR--ICF/IID.

(42) [(41)] ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by DADS to determine the level of care for an individual.

(43) [(42)] Individual--A person seeking to enroll or who is enrolled in the CLASS Program.

(44) [(43)] Institutional services--Medicaid-funded services provided in a nursing facility [licensed in accordance with Texas Health and Safety Code, Chapter 242,] or [in] an ICF/IID.

(45) [(44)] Intellectual disability--Consistent with Texas Health and Safety Code, §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period (0-18 years of age).

(46) [(45)] IPC--Individual plan of care. A written plan developed by an individual's service planning team using person-centered planning and documented on a DADS form that:

(A) meets [describes]:

(i) the requirement described in §45.201(a)(5) of this chapter (relating to Eligibility Criteria); and

(ii) the requirements described in §45.214(a)(1)(B) and (b) of this chapter (relating to Development of Enrollment IPC); and

[(i)] the type and amount of each CLASS Program service to be provided to the individual; and]

[(ii)] services and supports to be provided to the individual through non-CLASS Program resources including natural supports, medical services, and educational services; and]

(B) is authorized by DADS in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review).

(47) [(46)] IPC cost--The estimated annual cost of CLASS Program services on an IPC.

(48) [(47)] IPC period--The effective period of an enrollment IPC and a renewal IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of an enrollment IPC, as described in §45.214(h) of this chapter [~~(relating to Development of Enrollment IPC)~~], until the first calendar day of the same month of the effective date in the following year; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC as described in §45.222(b) of this chapter (relating to Renewal IPC and Requirement for Authorization to Continue Services).

(49) [(48)] IPP--Individual program plan. A written plan documented on a DADS form that describes the goals and objectives to be met by the provision of each CLASS Program service on an individual's IPC that:

(A) are supported by justifications;

(B) are measurable; and

(C) have timelines.

(50) [(49)] LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(51) [(50)] Licensed vocational nurse--A person licensed to provide vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(52) [(51)] Licensed vocational nursing--The provision of vocational nursing, as defined in Texas Occupations Code, Chapter 301.

(53) [(52)] Massage therapy--The provision of massage therapy as defined in Texas Occupations Code, Chapter 455.

(54) [(53)] Medicaid--A program administered by CMS and funded jointly by the states and the federal government that pays for health care to eligible groups of low-income people.

(55) [(54)] Medicaid waiver program--A service delivery model authorized under §1915(c) of the Social Security Act in which certain Medicaid statutory provisions are waived by CMS.

(56) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty.

(57) Military family member--An individual who is the spouse or child (regardless of age) of:

(A) a military member who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch; or

(B) a former military member who had declared and maintained Texas as the member's state of legal residence in the manner provided by the applicable military branch:

(i) who was killed in action; or

(ii) who died while in service.

(58) [(55)] Minor home modification--A physical adaptation to an individual's residence that is necessary to address the individual's specific needs and that enables the individual to function with greater independence in the individual's residence or to control his or her environment and:

(A) is included on the list of minor home modifications in the CLASS Provider Manual; or

(B) except as provided by §45.618(c) of this chapter (relating to Repair or Replacement of Minor Home Modification), is the repair and maintenance of a minor home modification purchased through the CLASS Program that is needed after one year has elapsed from the date the minor home modification is complete and that is not covered by a warranty.

(59) [(56)] Music therapy--The use of musical or rhythmic interventions to restore, maintain, or improve an individual's social or emotional functioning, mental processing, or physical health.

(60) [(57)] Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(61) Nursing facility--A facility that is licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242.

(62) [(58)] Occupational therapy--The provision of occupational therapy, as described in Texas Occupations Code, Chapter 454.

(63) [(59)] Own home or family home--A residence that is not:

(A) an ICF/IID;

(B) a nursing facility [licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242];

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Youth Commission, a jail, or prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are individuals with an intellectual disability, a related condition, or a physical disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(64) Person-centered planning--A process that empowers the individual (and the LAR on the individual's behalf) to direct the development of a plan for supports and services that meets the individual's outcomes. The process:

(A) identifies existing supports and services necessary to achieve the individual's outcomes;

(B) identifies natural supports available to the individual and negotiates needed services and supports;

(C) occurs with the support of a group of people chosen by the individual (and the LAR on the individual's behalf); and

(D) accommodates the individual's style of interaction and preferences regarding time and setting.

(65) [(60)] Physical therapy--The provision of physical therapy, as defined in Texas Occupations Code, Chapter 453.

(66) [(61)] Physician--Based on the definition in §97.2 of this title (relating to Definitions), a person who:

(A) is licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) is licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of an individual, and orders home health for the individual in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) is a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(67) [(62)] Prevocational services [serviee]--Services that are not job-task oriented and are provided to an individual who the service planning team does not expect to be employed (without receiving supported employment) within one year after prevocational services are to begin, to prepare the individual for employment. Prevocational services consist of:

(A) assessment of vocational skills an individual needs to develop or improve upon;

(B) individual and group instruction regarding barriers to employment;

(C) training in skills:

(i) that are not job-task oriented;

(ii) that are related to goals identified in the individual's habilitation plan developed in accordance with §45.214(a)(1)(A) of this chapter;

(iii) that are essential to obtaining and retaining employment, such as the effective use of community resources, transportation, and mobility training; and

(iv) for which an individual is not compensated more than 50 percent of the federal minimum wage or industry standard, whichever is greater;

(D) training in the use of adaptive equipment necessary to obtain and retain employment; and

(E) transportation between the individual's place of residence and prevocational services work site when other forms of transportation are unavailable or inaccessible.

(68) [(63)] Program provider--A DSA or a CMA.

(69) [(64)] Recreational therapy--Recreational or leisure activities that assist an individual to restore, remediate or habilitate the individual's level of functioning and independence in life activities, promote health and wellness, and reduce or eliminate the activity limitations caused by an illness or disabling condition.

(70) [(65)] Reduction--An action taken by DADS as a result of a review of a revised IPC or renewal IPC that decreases the amount or level of a service authorized by DADS on the prior IPC.

(71) [(66)] Registered nurse--A person licensed to provide professional nursing in accordance with Texas Occupations Code, Chapter 301.

(72) [(67)] Registered nursing--The provision of professional nursing, as defined in Texas Occupations Code, Chapter 301.

(73) [(68)] Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(74) [(69)] Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the *CLASS Provider Manual*.

(75) [(70)] Renewal IPC--An IPC developed for an individual in accordance with §45.223 of this chapter (relating to Renewal and Revision of an IPC) because the IPC will expire within 90 calendar days.

(76) [(71)] Respite--The temporary assistance with an individual's ADLs if the individual has the same residence as a person who routinely provides such assistance and support to the individual, and the person is temporarily unavailable to provide such assistance and support.

(A) If the person who routinely provides assistance and support, resides with the individual, and is temporarily unavailable to provide assistance and support, is a service provider of habilitation or an employee in the CDS option of habilitation, DADS does not authorize respite unless:

(i) the service provider or employee routinely provides unpaid assistance and support with activities of daily living to the individual;

(ii) the amount of respite does not exceed the amount of unpaid assistance and support routinely provided; and

(iii) the service provider of respite or employee in the CDS option of respite does not have the same residence as the individual.

(B) If the person who routinely provides assistance and support, resides with the individual, and is temporarily unavailable to provide assistance and support, is a service provider of support family services or continued family services, DADS does not authorize respite unless:

(i) for an individual receiving support family services, the individual does not receive respite on the same day the individual receives support family services;

(ii) for an individual receiving continued family services, the individual does not receive respite on the same day the individual receives continued family services; and

(iii) the service provider of respite or employee in the CDS option of respite does not have the same residence as the individual.

(C) Respite services consist of the following:

(i) interacting face-to-face with an individual who is awake to assist the individual in the following activities:

(I) self-care;

(II) personal hygiene;

(III) ambulation and mobility;

(IV) money management;

(V) community integration;

(VI) use of adaptive equipment;

(VII) self-administration of medication;

(VIII) reinforce any therapeutic goal of the individual;

(IX) provide transportation to the individual; and

(X) protect the individual's health, safety, and security;

(ii) interacting face-to-face or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities that do not involve interacting face-to-face with an individual:

(I) shopping for the individual;

ual;  
ication;  
or  
and security while the individual is asleep.

(77) [(72)] Revised IPC--An enrollment IPC or a renewal IPC that is revised during an IPC period in accordance with §45.223 of this chapter to add a new CLASS Program service or change the amount of an existing service.

(78) [(73)] Seclusion--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(79) [(74)] Service planning team--A planning team convened and facilitated by a CLASS Program case manager consisting of the following persons:

- (A) the individual;
- (B) if applicable, the individual's LAR;
- (C) the case manager;
- (D) a representative of the DSA;
- (E) other persons whose inclusion is requested by the individual or LAR and who agree to participate; and
- (F) a person selected by the DSA, with the approval of the individual or LAR, who is:
  - (i) professionally qualified by certification or licensure and has special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or
  - (ii) directly involved in the delivery of services and supports to the individual.

(80) [(75)] Service provider--A person who is an employee or contractor of a DSA who provides a direct service.

(81) [(76)] Specialized licensed vocational nursing--The provision of licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(82) [(77)] Specialized registered nursing--The provision of registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(83) [(78)] Speech and language pathology--The provision of speech-language pathology, as defined in Texas Occupations Code, Chapter 401.

(84) [(79)] Specialized therapies--Services to promote skills development, maintain skills, decrease inappropriate behaviors, facilitate emotional well-being, create opportunities for socialization, or improve physical and medical status that consist of the following:

- (A) aquatic therapy;
- (B) hippotherapy;
- (C) massage therapy;
- (D) music therapy;

- (E) recreational therapy; and
- (F) therapeutic horseback riding.

(85) [(80)] Staff person--A full-time or part-time employee of the program provider.

(86) [(81)] Support consultation--A service, as defined in §41.103 of this title, that may be provided to an individual who chooses to participate in the CDS option.

(87) [(82)] Supported employment--Assistance provided to sustain competitive employment to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(88) [(83)] Support family services--Services provided to an individual under 18 years of age who resides with a support family, as described in §45.531 of this chapter, that allow the individual to reside successfully in a community setting by supporting the individual to acquire, maintain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Support family services consist of the services described in §45.533 of this chapter.

(89) [(84)] Target behavior--A behavior identified in a behavior support plan for reduction or elimination.

(90) [(85)] Therapeutic horseback riding--The provision of therapy that:

- (A) involves an individual interacting with and riding on horses; and
- (B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual.

(91) [(86)] Temporary admission--Being admitted for 180 consecutive calendar days or less.

(92) [(87)] Transition assistance services--In accordance with Chapter 62 of this title (relating to Transition Assistance Services), services provided to an individual who is receiving institutional services and is eligible for and enrolling into the CLASS Program.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-5645



## SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW DIVISION 1. ELIGIBILITY AND MAINTENANCE OF INTEREST LIST

**40 TAC §45.201, §45.202**

STATUTORY AUTHORITY

The amendment and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment and new section affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

*§45.201. Eligibility Criteria.*

(a) An individual is eligible for CLASS Program services if:

(1) the individual meets the financial eligibility criteria described in Appendix B of the CLASS Program waiver application approved by CMS and available at [www.dads.state.tx.us](http://www.dads.state.tx.us) [is financially eligible for Medicaid because the individual receives supplemental security income (SSI) cash benefits or is determined by HHSC to be financially eligible for Medicaid];

(2) the individual is determined by DADS to meet the diagnostic eligibility criteria for the CLASS Program as described in §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria);

(3) the individual has been diagnosed with a related condition that manifested before the individual was 22 years of age;

(4) the individual demonstrates a need for habilitation;

(5) the individual has an IPC cost for CLASS Program services at or below \$114,736.07;

(6) the individual is not enrolled in another [Medicaid] waiver program and is not receiving a mutually exclusive service, as identified in the Mutually Exclusive Services table in Appendix III of the CLASS Provider Manual available at [www.dads.state.tx.us](http://www.dads.state.tx.us); and

(7) the individual resides in the individual's own home or family home.

(b) An individual is not considered to reside in the individual's own home or family home if the individual is admitted to one of the facilities listed in §45.103(63)(A) - (G) [~~§45.103(59)(A) - (G)~~] of this chapter (relating to Definitions) for more than 180 consecutive calendar days.

*§45.202. CLASS Interest List.*

(a) DADS maintains an interest list that contains the names of individuals interested in receiving CLASS Program services.

(b) A person may request an individual's name be added to the CLASS interest list by:

(1) calling DADS toll-free number; or

(2) submitting a written request to DADS.

(c) DADS adds an individual's name to the CLASS interest list:

(1) if the individual resides in Texas; and

(2) with an interest list request date as follows:

(A) for an individual who requests to be added to the interest list in accordance with subsection (b) of this section, the date of the request;

(B) for an individual under 22 years of age residing in a nursing facility, the date of admission to the nursing facility; or

(C) for an individual determined diagnostically or functionally ineligible for another DADS waiver program, one of the following dates, whichever is earlier:

(i) the request date of the interest list for the other waiver program; or

(ii) an existing request date for the CLASS Program for the individual.

(d) DADS removes an individual's name from the CLASS interest list if:

(1) the individual or LAR requests in writing that the individual's name be removed from the interest list, unless the individual is under 22 years of age and residing in a nursing facility;

(2) the individual moves out of Texas, unless the individual is a military family member living outside of Texas for less than one year after the military member's active duty ends;

(3) DADS withdraws an offer of CLASS Program Services as described in §45.211(d) of this chapter (relating to Written Offer of CLASS Program Services), unless:

(A) the individual is a military family member living outside of Texas for less than one year after the military member's active duty ends; or

(B) the individual is under 22 years of age and residing in a nursing facility;

(4) the individual is a military family member living outside of Texas for more than one year after the military member's active duty ends;

(5) the individual is deceased; or

(6) DADS has denied the individual enrollment in the CLASS Program and the individual or LAR has had an opportunity to exercise the individual's right to appeal the decision in accordance with §45.301 of this subchapter (relating to Individual's Right to a Fair Hearing) and did not appeal the decision, or appealed and did not prevail.

(e) If DADS removes an individual's name from the CLASS interest list in accordance with subsection (d)(1) - (4) of this section and, within 90 calendar days after the name was removed, DADS receives an oral or written request from a person to reinstate the individual's name on the interest list, DADS:

(1) reinstates the individual's name to the interest list based on the original request date described in subsection (c)(2)(A) - (C) of this section; and

(2) notifies the individual or LAR in writing that the individual's name has been reinstated to the interest list in accordance with paragraph (1) of this subsection.

(f) If DADS removes an individual's name from the CLASS interest list in accordance with subsection (d)(1) - (4) of this section and, more than 90 calendar days after the name was removed, DADS receives an oral or written request from a person to reinstate the individual's name on the interest list, DADS:

(1) adds the individual's name to the interest list based on the date DADS receives the oral or written request; and

(2) notifies the individual or LAR in writing that the individual's name has been added to the interest list in accordance with paragraph (1) of this subsection.

(g) If DADS removes an individual's name from the CLASS interest list in accordance with subsection (d)(6) of this section and DADS subsequently receives an oral or written request from a person to reinstate the individual's name on the interest list, DADS:

(1) adds the individual's name to the interest list based on the date DADS receives the oral or written request; and

(2) notifies the individual or LAR in writing that the individual's name has been added to the interest list in accordance with paragraph (1) of this subsection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lawrence Hornsby  
General Counsel  
Department of Aging and Disability Services  
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#### 40 TAC §45.202

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §45.202. Interest List.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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#### DIVISION 2. ENROLLMENT PROCESS

#### 40 TAC §§45.211, 45.212, 45.214, 45.216

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§45.211. *Written Offer of [a] CLASS Program Services [Vacancy].*

(a) [~~When a CLASS Program vacancy occurs,~~] DADS sends a written offer in accordance with this subsection.

(1) DADS sends a written offer of CLASS Program services [~~a program vacancy~~] to:

(A) the individual whose interest list request [~~registration~~] date is earliest on the CLASS [~~Program~~] interest list, unless the individual is a military family member living outside of Texas; or

(B) an individual who is residing in a nursing facility and requesting CLASS Program services [~~on the CLASS Program interest list and is receiving institutional services~~].

(2) DADS encloses with the written offer:

(A) a Selection Determination form which includes a list of CMAs and DSAs serving the catchment area in which the individual resides; and

(B) a CLASS Applicant Acknowledgement form.

(b) The individual or LAR accepts DADS offer of [a] CLASS Program services [~~vacancy~~] by:

(1) documenting the selection of one CMA and one DSA on the Selection Determination form; and

(2) ensuring [~~returning~~] the completed Selection Determination form and CLASS Applicant Acknowledgement form are submitted to DADS and postmarked or faxed no later than 60 [~~within 30~~] calendar days after the date of the written offer [~~from DADS~~].

(c) Upon timely receipt of the [a] Selection Determination form and CLASS Applicant Acknowledgement form completed by the individual or LAR, DADS notifies the CMA and DSA selected by the individual or LAR.

(d) DADS withdraws an offer of CLASS Program services [a program vacancy] made to an individual if:

(1) the completed Selection Determination form and CLASS Applicant Acknowledgement form are postmarked or faxed more than 60 [after 30] calendar days after [from] the date of the written offer [; the individual has not submitted a completed Selection Determination form to DADS];

(2) the individual or LAR declines the offer of CLASS Program services;

(3) the individual or LAR does not complete the enrollment process as described in §45.212 of this division (relating to Process for Enrollment of an Individual); or

(4) the individual was offered CLASS Program services [a program vacancy] because the individual is residing in a nursing facility [receiving institutional services] and the individual was discharged from the [moves out of the ICF/MR or] nursing facility before the effective date of the enrollment IPC.

*§45.212. Process for Enrollment of an Individual.*

(a) After notification by DADS that an individual selected a CMA as a program provider, the CMA must assign a case manager to perform the following functions within 14 calendar days of DADS notification to the CMA:

(1) verify that the individual resides in the catchment area for which the individual's selected CMA and DSA have a contract;

(2) conduct an initial face-to-face, in-home visit with the individual and LAR or person actively involved with the individual to provide an oral and written explanation of the following to the individual and LAR or person actively involved with the individual:

(A) CLASS Program services;

(B) the mandatory participation requirements of an individual as described in §45.302 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(C) the CDS option as described in §45.217 of this division (relating to CDS Option);

(D) the right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing);

(E) that the individual and LAR or person actively involved with the individual may report an allegation of abuse, neglect, or exploitation or make a complaint by calling DADS toll-free telephone number (1-800-458-9858);

(F) the process by which the individual and LAR or person actively involved with the individual may file a complaint regarding case management as required by §49.309 of this title (relating to Complaint Process);

(G) voter registration, if the individual is 18 years of age or older;

(H) transition assistance services, if the individual is receiving institutional services; and

(I) that while the individual is temporarily staying at a location outside the catchment area in which the individual resides, but within the state of Texas during a period of no more than 60 consecu-

tive days, the individual and LAR or person actively involved with the individual may request that the DSA provide:

(i) habilitation;

(ii) out-of-home respite in a camp described in §45.806(b)(2)(D) of this chapter (relating to Respite and Dental Treatment);

(iii) adaptive aids; or

(iv) nursing; and

(3) obtain the signature of the individual or LAR on a Verification of Freedom of Choice form designating the individual's choice for enrollment in the [individual of] CLASS Program [services] over enrollment in the ICF/IID Program.

(b) The CMA must:

(1) within two business days of the case manager's face-to-face, in-home visit required by subsection (a)(2) of this section:

(A) collect and maintain the information necessary for the CMA and DSA to process the individual's request for enrollment into the CLASS Program in accordance with the *CLASS Provider Manual*; and

(B) provide the individual's selected DSA with the collected information required by subparagraph (A) of this paragraph;

(2) assist the individual or LAR in completing and submitting an application for Medicaid financial eligibility as required by §45.302(1) of this chapter (relating to Mandatory Participation Requirements of an Individual); and

(3) ensure that the case manager documents in the individual's record the progress toward completing a Medicaid application and enrollment into CLASS Program services.

(c) If an individual or LAR does not submit a Medicaid application to HHSC within 30 calendar days of the case manager's initial face-to-face, in-home visit as required by §45.302(1) of this chapter, but is making good faith efforts to complete the application, the CMA may extend, in 30-calendar day increments, the time frame in which the application must be submitted to HHSC, except as provided in paragraph (1) of this subsection.

(1) The CMA may not grant an extension that results in a time period of more than 365 calendar days from the date of the case manager's initial face-to-face, in-home visit.

(2) The CMA must ensure that the case manager documents each extension in the individual's record.

(d) If an individual or LAR does not submit a Medicaid application to HHSC as required by §45.302(1) of this chapter and is not making good faith efforts to complete the application, the CMA must request, in writing, that DADS withdraw the offer of a program vacancy made to the individual in accordance with §45.211(d)(3) of this subchapter (relating to Written Offer of [a] CLASS Program Services [Vacancy]).

(e) If DSAs serving the catchment area in which the individual resides are not willing to provide CLASS Program services to an individual because they have determined that they cannot ensure the individual's health and safety, the CMA must provide to DADS, in writing, the specific reasons the DSAs have determined that they cannot ensure the individual's health and safety.

(f) The case manager must determine whether an individual meets the following criteria:



(1) the individual is being discharged from a nursing facility or an ICF/IID;

(2) the individual has not previously received transition assistance services as described in §62.5(e) of this title (relating to Service Description);

(3) the individual's proposed enrollment IPC does not include support family services or continued family services; and

(4) the individual anticipates needing transition assistance services as described in §62.5(e) of this title.

(g) If the case manager determines that an individual meets the criteria described in subsection (f) of this section, the case manager must:

(1) provide the individual or LAR with a list of transition assistance services providers in the catchment area in which the individual will reside;

(2) complete, with the individual or LAR, the Transition Assistance Services (TAS) Assessment and Authorization form available at [www.dads.state.tx.us](http://www.dads.state.tx.us) in accordance with the form's instructions, which includes:

(A) identifying the transition assistance services the individual needs as described in §62.5(e) of this title;

(B) estimating the monetary amount for each transition assistance service identified, which must be within the service limit described in §45.218(a)(4) of this division (relating to Service Limits); and

(C) documenting the individual's or LAR's choice of transition assistance services provider;

(3) submit the completed form to DADS for authorization;

(4) send the form authorized by DADS to the selected transition assistance services provider; and

(5) include the transition assistance services and the monetary amount authorized by DADS on the individual's proposed enrollment IPC.

(h) After notification by DADS that an individual selected the DSA as a program provider, the DSA must ensure that the following functions are performed during a face-to-face in-home visit within 14 calendar days after the CMA provides information to the DSA as required by subsection (b)(1)(B) of this section:

(1) a DSA staff person informs the individual and LAR or person actively involved with the individual, orally and in writing, of the process by which they may file a complaint regarding CLASS Program services provided by the DSA as required by §49.309 of this title;

(2) an appropriate professional completes an adaptive behavior screening assessment in accordance with the assessment instructions; and

(3) a registered nurse, in accordance with the *CLASS Provider Manual*, completes:

(A) a nursing assessment using the DADS CLASS Nursing Assessment form;

(B) the DADS Related Conditions Eligibility Screening Instrument; and

(C) the ID/RC Assessment.

(i) A DSA must:

(1) ensure that the diagnosis of the individual's condition documented on the ID/RC Assessment is authorized by a physician;

(2) submit to DADS: for a DADS decision regarding the individual's diagnostic eligibility:

(A) the completed adaptive behavior screening assessment;

(B) the completed DADS Related Conditions Eligibility Screening Instrument; and

(C) the completed ID/RC Assessment; and

(3) send the completed DADS CLASS Nursing Assessment form described in subsection (h)(3)(A) of this section to the CMA.

(j) In accordance with §45.213 of this division (relating to Determination of Diagnostic Eligibility by DADS), DADS reviews the documentation described in subsection (i)(2) of this section.

(k) If a DSA receives written notice from DADS that diagnostic eligibility is approved for an individual, as described in §45.213(d), the DSA must notify the individual's CMA of DADS decision within one business day after receiving the notice from DADS.

(l) If DADS denies diagnostic eligibility, DADS sends written notice to the individual or LAR of the denial of the individual's request for enrollment into the CLASS Program in accordance with §45.402(b) of this chapter (relating to Denial of a Request for Enrollment into the CLASS Program).

(m) If the CMA receives notice from the DSA that DADS approves diagnostic eligibility, the CMA must ensure that a proposed enrollment IPC, habilitation plan, and IPPs for the individual are developed and submitted to DADS for review in accordance with §45.214 of this division (relating to Development of Enrollment IPC).

(n) DADS reviews a proposed enrollment IPC in accordance with §45.216 of this division (relating to DADS review of an Enrollment IPC) to determine if:

(1) the IPC meets the requirement ~~[eligibility criterion]~~ described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria); and ~~[the requirements in §45.214(a)(1)(B) of this division]~~

(2) the CLASS Program services specified in the IPC meet~~[:]~~

~~[(A)]~~ the requirements described in §45.214(a)(1)(B)(iii) and (b) ~~[§45.214(b)]~~ of this division.~~[:]~~

~~[(B)]~~ the requirements in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications); and~~]~~

~~[(C)]~~ the service limits described in §45.218 of this division.~~:]~~

(o) If DADS notifies the individual's CMA, in accordance with §45.216(c) of this division, that the individual's request for enrollment is approved:

(1) the CMA must, within one business day after DADS notification, notify the individual or LAR and the individual's DSA of DADS decision; and

(2) the CMA and DSA must initiate CLASS Program services for the individual in accordance with the individual's IPC within seven calendar days after DADS notification.

(p) If DADS notifies the CMA that the individual's request for enrollment is approved but action is being taken as described in

§45.216(e) of this division, including modifying the individual's proposed enrollment IPC, the CMA must:

(1) implement the modified enrollment IPC; and

(2) send the individual or LAR written notice of the denial of the CLASS Program service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service).

(q) The CMA and DSA must not provide CLASS Program services to an individual until notified by DADS that the individual's request for enrollment into the CLASS Program has been approved.

*§45.214. Development of Enrollment IPC.*

(a) A CMA must, within 30 calendar days after notification by the DSA of DADS approval of diagnostic eligibility for an individual as required by §45.212(k) of this division (relating to Process for Enrollment of an Individual), ensure that an individual's case manager:

(1) convenes a service planning team meeting in which the service planning team develops:

(A) a habilitation plan~~;~~ as described in the *CLASS Provider Manual*,] based on information obtained from assessments conducted and observations made by the DSA as required by §45.212(h) of this division;

(B) a proposed enrollment IPC that:

(i) identifies the type of each CLASS Program service to be provided to an individual;

(ii) specifies the number of units of each CLASS Program service to be provided to the individual~~;~~ and]

(iii) for each CLASS Program service~~;~~]

(I) is within the service limit described in §45.218 of this division (relating to Service Limits); and

(II) meets the requirements in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications);

(iv) [(iii)] describes any other service or support to be provided to the individual through sources other than ~~the~~ CLASS Program services; and

(v) [(iv)] if it includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, or habilitation, identifies whether the service is critical to the individual's health and safety, as required by §45.231(a)(2) of this subchapter (relating to Service Backup Plans); and

(C) ~~develops~~ an IPP for each CLASS Program service listed on the proposed enrollment IPC; and

(2) if the individual may need cognitive rehabilitation therapy, begins assisting the individual in obtaining an assessment as required by §45.705(h) of this chapter (relating to CMA Service Delivery).

(b) The case manager must ensure that each CLASS Program service on the proposed enrollment IPC:

(1) is necessary to protect the individual's health and welfare in the community;

(2) addresses the individual's related condition;

(3) is not available to the individual through any other source, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

(4) is the most appropriate type and amount of CLASS Program service to meet the individual's needs; and

(5) is cost effective.

(c) If the individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed enrollment IPC, the case manager must:

(1) ensure that during the service planning team meeting required by subsection (a) of this section the proposed enrollment IPC is reviewed, signed as evidence of agreement, and dated by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA; and

(2) no later than 30 calendar days before the effective date of the proposed enrollment IPC as determined by the service planning team:

(A) submit the following to DADS for its review:

(i) the proposed enrollment IPC;

(ii) the IPPs;

(iii) the habilitation plan; and

(iv) the completed DADS CLASS Nursing Assessment form provided by the DSA in accordance with §45.212(i)(3) of this division; and

(B) if the individual will receive a service through the CDS option, send a copy of the proposed enrollment IPC, the IPP for each service the individual will receive through the CDS option, and the habilitation plan to the FMSA.

(d) If the individual or LAR requests a CLASS Program service that the case manager or DSA has determined does not meet the criteria described in subsection (b) of this section, the requirements described in Subchapter F of this chapter [~~relating to Adaptive Aids and Minor Home Modifications~~], or exceeds a service limit described in §45.218 of this division, the CMA must comply with this subsection.

(1) The CMA must, in accordance with *CLASS Provider Manual*, send the individual or LAR written notice of the denial of the requested CLASS Program service, copying the DSA and FMSA, if the individual or LAR requests a CLASS Program service that the CMA or DSA has determined:

(A) does not meet the criteria described in subsection (b) of this section;

(B) does not meet the requirements described in Subchapter F of this chapter [~~relating to Adaptive Aids and Minor Home Modifications~~]; or

(C) exceeds a service limit described in §45.218 of this division.

(2) If the CMA is required to send written notice of denial of a CLASS Program service as described in paragraph (1) of this subsection, the CMA must also:

(A) no later than 30 calendar days before the effective date of the proposed IPC as determined by the service planning team, submit to DADS for its review:

(i) the proposed enrollment IPC that includes the type and amount of CLASS Program services in dispute and not in dispute and is signed and dated by:

- (I) the individual or LAR;
- (II) the case manager; and
- (III) the DSA;

- (ii) the IPPs; and
- (iii) the habilitation plan; and

(B) if the individual will receive a service through the CDS option, send a copy of the proposed enrollment IPC to the FMSA.

(e) DADS reviews a proposed enrollment IPC in accordance with §45.216 of this division (relating to DADS Review of an Enrollment IPC). At DADS request, the CMA must submit additional documentation supporting the proposed enrollment IPC to DADS within 10 calendar days after the date of DADS request.

(f) If DADS [determines that the proposed enrollment IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria) and the CLASS Program services specified in the IPC meet the requirements described in subsection (b) of this section:]

[(1) DADS] notifies the individual's CMA, in writing, that the IPC is authorized and the individual's request for enrollment is approved, as described in §45.216(c) of this division. [; and]

[(2)] the CMA must send a copy of the authorized IPC to the DSA and, if the individual receives a service through the CDS option, to the FMSA.

(g) The process by which an individual's request for enrollment or a CLASS Program service is denied, based on DADS review of a proposed enrollment IPC, is described in §45.216(d) - (f) of this division.

(h) The effective date of an enrollment IPC is one of the following, whichever is later:

(1) the effective date as determined by the service planning team; or

(2) the date DADS notifies the CMA that the individual's request for enrollment is approved and the IPC is authorized in accordance with §45.216(c) or (e)(2)(C) of this division.

(i) An enrollment IPC is effective for an IPC period.

(j) An individual's enrollment IPC must be reviewed and updated in accordance with §45.223 of this subchapter (relating to Renewal and Revision of an IPC).

*§45.216. DADS Review of an Enrollment IPC.*

(a) DADS reviews a proposed enrollment IPC, habilitation plan, and IPPs to determine if:

(1) the IPC meets the requirement described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria); and [the requirements in §45.214(a)(1)(B) of this division (relating to Development of Enrollment IPC); and]

(2) the CLASS Program services specified in the IPC[;]

[(A)] meet the requirements described in §45.214(a)(1)(B)(iii) and (b) [§45.214(b)] of this division (relating to Development of Enrollment IPC).[;]

[(B)] meet the requirements in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications); and]

[(C)] are within the service limits described in §45.218 of this division (relating to Service Limits).]

(b) At DADS request, the CMA must submit additional documentation supporting the proposed enrollment IPC to DADS within 10 calendar days after DADS request.

(c) DADS notifies the individual's CMA, in writing, that the IPC is authorized and the individual's request for enrollment is approved if [If ] DADS determines that:

(1) the proposed enrollment IPC meets the requirement described in subsection (a)(1) of this section; and [§45.201(a)(5) of this subchapter and the requirements in §45.214(a)(1)(B) of this division and]

(2) the CLASS Program services specified in the IPC meet the requirements described in subsection (a)(2) of this section [§45.214(b) of this division; Subchapter F of this chapter; and §45.218 of this division; DADS notifies the individual's CMA, in writing, that the IPC is authorized and the individual's request for enrollment is approved].

(d) If DADS determines that the proposed enrollment IPC does not meet the requirement described in subsection (a)(1) of this section [§45.201(a)(5) of this subchapter], DADS notifies the individual's CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's request for enrollment is denied and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this subchapter (relating to Individual's Right to a Fair Hearing).

(e) DADS denies a CLASS Program service and modifies an IPC in accordance with this subsection.

(1) DADS denies a CLASS Program service if DADS determines that the proposed enrollment IPC meets the requirement described in subsection (a)(1) of this section [§45.201(a)(5) of this subchapter] but one or more of the CLASS Program services specified in the IPC does not meet the requirements described in subsection (a)(2) of this section.[;]

[(A) does not meet the requirements described in §45.214(b) of this division;]

[(B) does not meet the requirements described in Subchapter F of this chapter; or]

[(C) exceeds a service limit described in §45.218 of this division.]

(2) If DADS denies a service as described in paragraph (1) of this subsection, DADS:

(A) modifies and authorizes the IPC;

(B) approves the individual's request for enrollment with the modified IPC; and

(C) notifies the individual's CMA, in writing, of the action taken.

(f) If DADS notifies the CMA of the denial of the CLASS Program service and of the enrollment IPC modified in accordance with subsection (e) of this section, the CMA must:

(1) implement the modified enrollment IPC; and

(2) send the individual or LAR written notice of the denial of the CLASS Program service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## DIVISION 3. REVIEWS

### 40 TAC §45.223, §45.225

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §45.223. *Renewal and Revision of an IPC.*

(a) Beginning the effective date of an individual's IPC, as determined by §45.214(h) of this subchapter (relating to Development of Enrollment IPC) or §45.222(b) of this division (relating to Renewal IPC and Requirement for Authorization to Continue Services), a case manager must, in accordance with the *CLASS Provider Manual*, meet with the individual or LAR in the individual's home, or as requested by the individual or LAR, in another location where the individual receives CLASS Program services.

(b) During each meeting described in subsection (a) of this section, the case manager must:

(1) review the individual's progress toward achieving the goals and objectives as described on the IPP for each CLASS Program service listed on the individual's IPC;

(2) if an individual's IPC includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, or habilitation, and any of those service are not identified as critical to meeting the individual's health and safety, discuss with the individual or LAR whether the service may now be critical to the individual's health and safety;

(3) if a service backup plan has been implemented, discuss the implementation of the service backup plan with the individual or LAR to determine whether or not the plan was effective;

(4) if the case manager determines a service may now be critical to the individual's health and safety, as described in paragraph (2) of this subsection, or that the service backup plan was ineffective as described in paragraph (3) of this subsection, convene a service

planning team meeting to discuss revisions to the IPC and the service backup plan; and

(5) complete the DADS IPP Service Review form in accordance with the *CLASS Provider Manual*.

(c) An individual's case manager must:

(1) convene a service planning team meeting to develop a proposed renewal IPC, new IPPs and a new habilitation plan at least annually, but no more than 90 calendar days before the end of the IPC period of the IPC being renewed;

(2) within five business days after becoming aware that the individual's need for a CLASS Program service changes:

(A) develop a proposed revised IPC and revised IPP(s) and, if necessary, a revised habilitation plan; and

(B) if the individual may need cognitive rehabilitation therapy, begin assisting the individual to obtain an assessment as required by §45.705(h) of this chapter (relating to CMA Service Delivery); and

(3) if the proposed renewal or proposed revised IPC includes registered nursing, licensed vocational nursing, specialized registered nursing, specialized licensed vocational nursing, or habilitation, ensure that the IPC identifies whether the service is critical to the individual's health and safety, as required by §45.231(a)(2) of this division (relating to Service Backup Plans).

(d) The case manager must:

(1) ensure that a proposed renewal IPC and proposed revised IPC, developed in accordance with subsection (c)(1) or (2) of this section, meet the requirements [criteria] described in §45.214(a)(1)(B) and (b) of this subchapter; and

(2) ensure that new or revised IPPs developed in accordance with subsection (c)(1) or (2) of this section are reviewed, signed, and dated as evidence of agreement by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA.

(e) If the individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed renewal IPC, developed in accordance with subsection (c)(1) of this section, or a proposed revised IPC, developed in accordance with subsection (c)(2) of this section, the case manager must:

(1) ensure that the proposed renewal IPC or proposed revised IPC is reviewed, signed, and dated as evidence of agreement by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA; and

(2) submit to DADS for its review:

(A) the signed proposed renewal IPC, new IPPs, new habilitation plan, and the completed DADS CLASS Nursing Assessment form provided by the DSA in accordance with §45.221(a)(3) of this division (relating to Annual Review and Reinstatement of Diagnostic Eligibility) at least 30 calendar days before the end of the IPC period; or

(B) the signed proposed revised IPC, any revised IPPs, any revised habilitation plan, and the completed DADS CLASS Nurs-

ing Assessment form at least 30 calendar days before the effective date proposed by the service planning team; and

(3) if the individual receives a service through the CDS option, send a copy of the signed proposed renewal or signed proposed revised IPC, revised IPP for a service received through the CDS option, and any revised habilitation plan to the FMSA.

(f) If the individual or LAR requests a CLASS Program service that the case manager or DSA has determined does not meet the requirements [eriteria] described in §45.214(a)(1)(B)(iii) or (b) [§45.214(b)] of this subchapter [or the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications), or exceeds a service limit described in §45.218 of this subchapter], the CMA must comply with this subsection.

(1) The CMA must, in accordance with the *CLASS Provider Manual*, send the individual or LAR written notice of the denial of or proposal to reduce [as appropriate,] the requested CLASS Program service, copying the DSA and, if applicable, the FMSA[; if the individual or LAR requests a CLASS Program service that the CMA or DSA has determined:]

~~[(A) does not meet the eriteria described in §45.214(b) of this subchapter;]~~

~~[(B) does not meet the requirements described in Subchapter F of this chapter; or]~~

~~[(C) exceeds a service limit described in §45.218 of this subchapter].~~

(2) If the CMA is required to send a written notice of the denial of, or proposal to reduce, a CLASS Program service as described in paragraph (1) of this subsection, the CMA must:

(A) in accordance with the time frames described in subsection (e)(2) of this section, submit to DADS for its review:

(i) the proposed renewal IPC or proposed revised IPC, which includes the type and amount of CLASS Program services in dispute and not in dispute, and is signed and dated by:

(I) the individual or LAR;

(II) the case manager; and

(III) the DSA;

(ii) the IPPs; and

(iii) the new habilitation plan or any revised habilitation plan; and

(B) if the individual receives a service through the CDS option, send a copy of the proposed renewal or proposed revised IPC, the revised IPP for a service received through the CDS option, and any revised habilitation plan to the FMSA.

(g) At DADS request, the CMA must submit additional documentation supporting the proposed IPC to DADS within 10 calendar days after the date of DADS request.

(h) If DADS determines that the proposed renewal IPC or the proposed revised IPC meets the requirement described in §45.201(a)(5) of this subchapter and the CLASS Program services specified in the IPC meet the requirements described in §45.214(a)(1)(B)(iii) and (b) [§45.214(b)] of this subchapter:

(1) DADS notifies the individual's CMA, in writing, that the IPC is authorized; and

(2) the CMA must send a copy of the authorized IPC to the DSA and, if the individual receives a service through the CDS option, to the FMSA.

(i) The process by which an individual's CLASS program services are terminated or a CLASS Program service is denied, based on DADS review of a proposed renewal IPC or proposed revised IPC, is described in §45.225(c) - (e) of this division (relating to Utilization Review of an IPC by DADS).

(j) The IPC period of a revised IPC is the same IPC period as the enrollment IPC or renewal IPC being revised.

*§45.225. Utilization Review of an IPC by DADS.*

(a) At DADS discretion, DADS conducts a utilization review of an IPC to determine if:

(1) the IPC meets the requirement described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria); and

(2) the CLASS Program services specified in the IPC meet the requirements described in §45.214(a)(1)(B)(iii) and (b) [§45.214(b)] of this subchapter (relating to DADS Review of an Enrollment IPC), [Development of Enrollment IPC), Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications), and §45.218 of this subchapter (relating to Service Limits).]

(b) If requested by DADS, a CLASS Program provider must submit documentation supporting the IPC to DADS within 10 calendar days after DADS request.

(c) If DADS determines that an [the] IPC does not meet the requirement described in §45.201(a)(5) of this subchapter, DADS notifies the individual's CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's CLASS Program services are proposed for termination and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(d) DADS denies or proposes reduction of a CLASS Program service and modifies an IPC in accordance with this subsection.

(1) DADS denies or proposes reduction of a CLASS Program service if DADS determines that the IPC meets the requirement described in §45.201(a)(5) of this subchapter but one or more of the CLASS Program services specified in the IPC do not meet the requirements described in §45.214(a)(1)(B)(iii) and (b).[;]

~~[(A) does not meet the requirements described in §45.214(b) of this subchapter;]~~

~~[(B) does not meet the requirements described in Subchapter F of this chapter; or]~~

~~[(C) exceeds a service limit described in §45.218 of this subchapter].~~

(2) If DADS denies or proposes reduction of a CLASS Program service as described in paragraph (1) of this subsection, DADS:

(A) modifies and authorizes the IPC; and

(B) notifies the individual's CMA, in writing, of the action taken.

(e) If DADS notifies the CMA of the denial or proposed reduction of the individual's CLASS Program services and of the IPC modified in accordance with subsection (d) of this section:

(1) for a denial of a CLASS Program service, the CMA must:

(A) send the individual or LAR written notice of the denial of the CLASS Program service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service); and

(B) coordinate the implementation of the modified IPC;

or

(2) for a proposed reduction of a CLASS Program service:

(A) the CMA must send the individual or LAR written notice of the proposal to reduce the CLASS Program service in accordance with §45.405(c) of this chapter (relating to Reduction of a CLASS Program Service); and

(B) the modified IPC is handled as follows:

(i) in accordance with §45.405(d) of this chapter, if the individual or LAR requests a fair hearing before the effective date of the reduction of a CLASS Program service, as specified in the written notice, the modified IPC may not be implemented; or

(ii) if the individual or LAR does not request a fair hearing before the effective date of the reduction of a CLASS Program service, as specified in the written notice, the CMA must coordinate the implementation of the modified IPC.

(f) The IPC period of an enrollment IPC or a renewal IPC modified by DADS in accordance with subsection (d) of this section does not change as a result of DADS modification.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-5645



## SUBCHAPTER D. TRANSFER, DENIAL, SUSPENSION, REDUCTION, AND TERMINATION OF SERVICES

### 40 TAC §45.403, §45.405

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §45.403. Denial of a CLASS Program Service.

(a) DADS denies a CLASS Program service [in] on an individual's IPC, based on a review described in §45.216 of this chapter (relating to DADS Review of an Enrollment IPC), §45.223 of this chapter (relating to Renewal and Revision of an IPC), or §45.225 of this chapter (relating to Utilization Review of an IPC by DADS), if DADS determines that the CLASS Program service[-]

[(+) does not meet the requirements described in §45.214(a)(1)(B)(iii) and (b) [§45.214(b)] of this chapter (relating to Development of Enrollment IPC).[-]

[(2) does not meet the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications); or]

[(3) exceeds a service limit described in §45.218 of this chapter (relating to Service Limits).-]

(b) DADS notifies the CMA selected by the individual, in writing, if DADS denies a CLASS Program service on the individual's IPC. DADS sends a copy of the modified IPC to the CMA.

(c) Upon receipt of DADS written notice of denial of a CLASS Program service, the CMA must:

(1) in accordance with the *CLASS Provider Manual*, send written notice to the individual or LAR of the denial of the service, copying the individual's DSA and, if selected, FMSA;

(2) include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing); and

(3) coordinate the implementation of the modified IPC described in subsection (b) of this section.

#### §45.405. Reduction of a CLASS Program Service.

(a) DADS reduces a CLASS Program service on an individual's IPC, based on a review described in §45.223 of this chapter (relating to Renewal and Revision of an IPC) or §45.225 of this chapter (relating to Utilization Review of an IPC by DADS), if[-]

[(+) DADS determines that the CLASS Program service on the IPC does not meet[-]

[(A) the requirements described in §45.214(a)(1)(B)(iii) and (b) [§45.214(b)] of this chapter (relating to Development of Enrollment IPC).[-] or]

[(B) the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications).-]

[(2) the service is transition assistance services and the service limit described in §45.218(c) of this chapter (relating to Service Limits) is exceeded; or]

[(3) DADS denies a request for an exception to the service limit of a service described in §45.218(b) of this chapter submitted in accordance with §45.219(c) of this chapter (relating to Exception of Service Limits).-]

(b) DADS notifies the individual's CMA, in writing, if it proposes to reduce a CLASS Program service. DADS sends a copy of the modified IPC to the CMA.

(c) Upon receipt of a written notice from DADS proposing to reduce a CLASS Program service, the CMA must, in accordance with

the *CLASS Provider Manual*, send written notice to the individual or LAR of the proposal to reduce the service, copying the individual's DSA and, if selected, CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(d) If the individual or LAR requests a fair hearing before the effective date of the reduction of a CLASS Program service [Service], as specified in the written notice, the modified IPC described in subsection (b) of this section may not be implemented and the DSA must provide the service to the individual in the amount authorized in the prior IPC while the appeal is pending.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

### SUBCHAPTER B. INTEREST LISTS

#### 40 TAC §48.1301

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §48.1301, concerning interest lists, in Chapter 48, Community Care for Aged and Disabled.

#### BACKGROUND AND PURPOSE

The purpose of the repeal is to remove rules regarding interest lists for services provided in the Community-Based Alternatives (CBA) Program, the Community Living Assistance and Support Services (CLASS) Program, and the Medically Dependent Children Program (MDCP). New interest list rules for the CLASS Program and the MDCP are proposed elsewhere in this issue, including proposed new §45.202, CLASS Interest List, and §51.201, MDCP Interest List. New interest list rules for the CBA Program are not proposed because, effective September 1, 2014, the CBA Program was terminated to allow for the provision of CBA-like services through STAR+Plus managed care.

#### SECTION-BY-SECTION SUMMARY

The proposed repeal of §48.1301 deletes rules for interest lists in the CLASS Program and the MDCP. Interest lists for those programs are addressed in proposed new §45.202 and §51.201.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed repeal is in effect, enforcing or

administering the repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will not have an adverse economic effect on small businesses or micro-businesses.

#### PUBLIC BENEFIT AND COSTS

Kristi Jordan, Deputy Commissioner, has determined that, for each year of the first five years the repeal is in effect, the public benefit expected as a result of enforcing the repeals is the removal of outdated rules from the DADS rule base.

Ms. Jordan anticipates that there will not be an economic cost to any person because no obligations are imposed by repealed rules. The repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Debra Campbell at (512) 438-5645 in DADS Long-Term Services and Supports/Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R01, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R01" in the subject line.

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

§48.1301. *Interest Lists.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

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Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 438-5645



## CHAPTER 51. MEDICALLY DEPENDENT CHILDREN PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §51.103, concerning definitions, in Subchapter A, Introduction; amendments to §51.211, concerning enrollment; §51.213, concerning enrollment of former nursing facility residents; §51.217, concerning individual plan of care; new §51.201, concerning MDCP interest list; and the repeal of §51.201, concerning interest list, in Subchapter B, Eligibility, Enrollment, and Services; amendments to §51.411, concerning general service delivery requirements; and §51.485, concerning service provider qualifications for providing employment assistance and supported employment, in Subchapter D, Provider Requirements; in Chapter 51, Medically Dependent Children Program.

### BACKGROUND AND PURPOSE

The proposed rules describe DADS current practices regarding maintaining the MDCP interest list and making and withdrawing offers of MDCP services. The proposed rules require DADS to keep the name of a military family member who resides out of state on the MDCP interest list for up to one year after the military member's active duty ends. Ordinarily, a person who resides out of state is not permitted to be on the MDCP interest list. The proposed rules also allow a person other than the individual or legally authorized representative (LAR) to request that an individual's name be added to the MDCP interest list, allow a person to make a written request to DADS to add an individual's name to the interest list, allow DADS to reinstate an individual's name to the interest list with the original request date if a request to reinstate is received by DADS within 90 calendar days after the individual's name was removed from the list, and allow DADS to withdraw an offer of MDCP Program services if the appropriate forms are not timely submitted to DADS. The proposed rules on reinstatement mitigate hardship on an individual and potential errors by DADS. In addition, the proposed rules give an individual sufficient time to respond to an offer, but also allow DADS to offer services to the next individual on the interest list if the individual does not take action necessary to proceed with enrollment.

The proposed rules clarify the requirement that the service planning team use person-centered planning to develop the individual plan of care and amend requirements for a service provider

of employment assistance and supported employment to be consistent with the MDCP waiver application.

The proposed rules also add definitions of "person-centered planning" and "natural supports" that are consistent with the definitions of each term for other DADS waiver programs.

The proposed rules also make editorial changes for clarity and consistency.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §51.103 adds a definition of "applicant," "military member," "military family member," "natural supports" "nursing facility," and "person-centered planning." The proposed amendment deletes the definition of "interest list" because it is described in the proposed new §51.201

The proposed repeal of §51.201, related to the MDCP interest list, allows for proposed new §51.201 on the same topic.

The proposed §51.201 allows a person to call or write to DADS requesting an applicant be placed on the interest list and requires an applicant be under the age of 21 and reside in Texas. The proposed rule describes how the interest list request date is determined if a person calls or writes to DADS, if an applicant under the age of 21 resides in a nursing facility, if an applicant is a former nursing facility resident, or if an applicant is determined diagnostically or functionally ineligible for another waiver program. The proposed rule also describes the circumstances under which DADS removes an applicant's name from the MDCP interest list and may reinstate a name after it is removed. The proposed rule describes how an interest list request date is assigned when a name is reinstated on the interest list, and the notification an applicant, parent, or LAR receives regarding the reinstatement.

The proposed amendment to §51.211 establishes that DADS mails enrollment materials to an applicant whose interest list request date is the earliest, unless the applicant is a military family member living outside of Texas; to a former nursing facility resident who meets certain requirements; or to a current nursing facility resident who meets certain requirements. The proposed amendment lists the enrollment materials DADS mails to an applicant and lists the forms that an applicant, parent, or guardian must return to DADS within 60 days after the date on the DADS offer letter. The proposed amendment establishes that DADS withdraws an offer if the completed forms are not returned to DADS within 60 days; the applicant, parent or guardian declines the offer; the applicant, parent or guardian does not complete the enrollment process; or the applicant in a nursing facility is discharged before being determined eligible for Medicaid nursing services and MDCP.

The proposed amendment to §51.213 replaces "person" with "applicant," which is a new term defined in §51.103 as a Texas resident seeking services in the MDCP.

The proposed amendment to §51.217 requires an individual plan of care (IPC) to be developed using a person-centered approach and corrects the term "provider" to "program provider."

The proposed amendment to §51.411 allows a backup plan to identify a primary caregiver designee, who is not required to meet the qualifications for an attendant for providing respite and flexible family support, as a backup to a service provider.

The proposed amendment to §51.485 prohibits the spouse of an individual or a parent of an individual who is under the age of 18 from providing employment assistance or supported employment. The amendment otherwise removes the prohibition on a



"legally responsible person" from providing employment assistance or supported employment.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments, new section, and repeal are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments, new section, and repeal will not have an adverse economic effect on small businesses or micro-businesses.

#### PUBLIC BENEFIT AND COSTS

Kristi Jordan, Deputy Commissioner, has determined that, for each year of the first five years the amendments are in effect, the public will benefit from rules that more clearly address an applicant's placement on the MDCP interest list and the timeframes for an applicant on the interest list to enroll in MDCP before the applicant's name is removed from the interest list and an offer is made to another applicant. The public will also benefit from rules that state DADS expectations of unpaid providers of a service backup plan.

Ms. Jordan anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Debra Campbell at (512) 438-5645 in DADS Long-Term Services and Supports/Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R01, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R01" in the subject line.

## SUBCHAPTER A. INTRODUCTION

### 40 TAC §51.103

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §51.103. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) §1915(c) waiver program--A home or community-based service authorized by §1915(c) of the Social Security Act and approved by the Centers for Medicare and Medicaid Services.

(2) Activities of daily living--Activities that are essential to daily self care, including bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer and ambulation, positioning, range of motion, and assistance with self-administered medications.

(3) Adaptive aid--A device that is needed to treat, rehabilitate, prevent, or compensate for a condition that results in a disability or a loss of function and helps an individual perform the activities of daily living or control the environment in which the individual lives.

(4) Appeal--A request for a fair hearing to challenge a program or service suspension, denial, termination, or service reduction.

(5) Applicant--A Texas resident seeking services in the MDCP.

(6) [(5)] Attendant--An employee of a program provider or of an individual who has selected the CDS option who:

(A) provides direct care to the individual; and

(B) meets the requirements in §51.421 of this chapter (relating to Requirements for Attendants Providing Respite and Flexible Family Support Services).

(7) [(6)] Backup plan--A documented plan to ensure that services are provided to an individual when a service provider is not available to deliver services as specified on the service schedule.

(8) [(7)] Basic child care--Watchful attention and supervision of an individual while the individual's primary caregiver is at work, in job training, or at school.

(9) [(8)] Case manager--A DADS employee who is responsible for case management activities for an individual, including eligibility determination, enrollment, assessment and reassessment of the individual's need, service plan development, and intercession on the individual's behalf.

(10) [(9)] CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(11) [(40)] Competitive employment--Employment that pays an individual at least the minimum wage if the individual is not self-employed.

(12) [(41)] Contract--A written agreement between DADS and a program provider to provide MDCP services to an individual. A contract is a provisional contract that DADS enters into in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date or a standard contract that DADS enters into in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(13) [(42)] Cost ceiling--The maximum dollar amount available to an individual for MDCP services per IPC year.

(14) [(43)] DADS--Department of Aging and Disability Services.

(15) [(44)] DADS RN--A DADS employee who is an RN.

(16) [(45)] Day--A calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(17) [(46)] Delegated task--A task that a physician or RN delegates in accordance with state law.

(18) [(47)] Discriminate--To treat a person differently based on the person's race, color, national origin, gender, or age, without a reason approved by DADS.

(19) [(48)] DFPS--Department of Family and Protective Services.

(20) [(49)] Employment assistance--Assistance provided to an individual to help the individual locate competitive employment in the community.

(21) [(20)] Facility-based respite--Respite services provided to an individual in a licensed hospital or nursing facility.

(22) [(21)] Family member--A person who is related by blood, by affinity, or by law to an individual.

(23) [(22)] FMS--Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(24) [(23)] FMSA--Financial management services agency. An entity, as defined in §41.103 of this title, that provides FMS to an individual participating in the CDS option.

(25) [(24)] Flexible family support services--A diverse array of DADS approved, individualized, disability-related services that support independent living, participation in community based child care, employment, and participation in post-secondary education.

(26) [(25)] Foster home--A foster home as defined in the Human Resources Code, §42.002.

(27) [(26)] Guardian--A person appointed as a guardian of the estate or of the person by a court.

(28) [(27)] HHSC--Texas Health and Human Services Commission.

(29) [(28)] HCSSA--A home and community support services agency licensed by DADS in accordance with Texas Health and Safety Code, Chapter 142.

(30) [(29)] Host family--A program provider with whom an individual lives when the individual's parents are unable to care for the individual in their home.

(31) [(30)] Imminent danger--An immediate, real threat to a person's health or safety.

(32) [(31)] Individual--A person who has been determined eligible to receive MDCP services. A reference in this chapter to "individual" includes the individual's primary caregiver, unless the context indicates otherwise.

[(32) Interest list--A list of people who have contacted DADS and expressed an interest in MDCP services but have not applied for nor been determined eligible for MDCP services.]

(33) IPC--Individual plan of care. A plan that documents:

(A) the services provided to an individual through both MDCP and third-party resources, and the sources or providers of those services;

(B) medical information about the individual obtained by a DADS RN;

(C) a social assessment of the individual and the individual's family obtained by the case manager;

(D) the projected cost of the MDCP services;

(E) the authorization begin date stated on the service authorization form; and

(F) a program provider's service schedule for respite or flexible family support services.

(34) IPC year--A period recorded on an IPC with a beginning and end date.

(35) LAR--Legally authorized representative. A term defined in §41.103 of this title for an individual who selects the CDS option.

(36) LVN--Licensed vocational nurse. A person licensed by the Texas Board of Nursing or who holds a license from another state recognized by the Texas Board of Nursing to practice vocational nursing in Texas.

(37) MDCP--Medically Dependent Children Program. A §1915(c) waiver program that provides community-based services to help the primary caregiver care for an individual in the community.

(38) Medical necessity--The medical criteria a person must meet for admission to a Texas nursing facility.

(39) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty.

(40) Military family member--An applicant who is the spouse or child (regardless of age) of:

(A) a military member who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch; or

(B) a former military member who had declared and maintained Texas as the member's state of legal residence in the manner provided by the applicable military branch:

(i) who was killed in action; or

(ii) who died while in service.

(41) [(39)] Minor home modification--A physical change to an individual's residence that is needed to prevent institutionalization or to support the most integrated setting for an individual to remain in the community.

(42) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(43) Nursing facility--A facility that is required to be licensed under the Texas Health and Safety Code, Chapter 242.

(44) [(40)] Parent--An individual's natural or adoptive parent or the spouse of the natural or adoptive parent.

(45) Person-centered planning--A process that empowers the individual or the primary caregiver to direct the development of an IPC that meets the individual's outcomes. The process:

(A) identifies existing supports and services necessary to achieve the individual's outcomes;

(B) identifies natural supports available to the individual and negotiates needed services and supports;

(C) occurs with the support of a group of people chosen by the individual or primary caregiver; and

(D) accommodates the individual's style of interaction and preferences regarding time and setting.

(46) [(41)] Practitioner--A physician currently licensed in Texas, Louisiana, Arkansas, Oklahoma, or New Mexico; a physician assistant currently licensed in Texas; or an RN approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(47) [(42)] Primary caregiver--A person, including a parent or guardian, who:

(A) for an individual who receives a service other than flexible family support services, provides daily uncompensated care; or

(B) for an individual who receives flexible family support services, routinely provides uncompensated care.

(48) [(43)] Program provider--A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide MDCP services, excluding an FMSA.

(49) [(44)] Protective device--An item or device, such as a safety vest, lap belt, bed rail, safety padding, adaptation to furniture, or helmet, if:

(A) used only:

(i) to protect an individual from injury; or

(ii) for body positioning of the individual to ensure health and safety; and

(B) not used as a mechanical restraint to modify or control behavior.

(50) [(45)] Reckless behavior--Acting with conscious indifference to the consequences.

(51) [(46)] Residence--The place where an individual lives.

(52) [(47)] Respite services--Direct care services needed because of an individual's disability that provide a primary caregiver temporary relief from caregiving activities when the primary caregiver would usually perform such activities.

(53) [(48)] Restrictive intervention--An action or procedure that limits an individual's movement, access to other individuals, locations, or activities, or that restricts an individual's rights.

(54) [(49)] RN--Registered nurse. A person licensed by the Texas Board of Nursing or who holds a license from another state rec-

ognized by the Texas Board of Nursing to practice professional nursing in Texas.

(55) [(50)] Service authorization form--A DADS form that authorizes a program provider to deliver MDCP services.

(56) [(51)] Service initiation date--The first day a program provider begins providing an MDCP service.

(57) [(52)] Service planning team--A team comprised of persons convened and facilitated by a DADS case manager for the purpose of developing, reviewing, and revising an individual's IPC. In addition to a DADS case manager, the team:

(A) includes;

(i) the individual; and

(ii) the primary caregiver; and

(B) may include:

(i) the program provider; and

(ii) other persons whom the individual or primary caregiver invites to participate.

(58) [(53)] Service provider--A person who provides an MDCP service directly to an individual and who is an employee or contractor of a program provider.

(59) [(54)] Service reduction--A DADS action that temporarily or permanently decreases services delivered to an individual.

(60) [(55)] Service schedule--A schedule for delivering respite or flexible family support services to an individual that is agreed upon and signed by the individual or the individual's primary caregiver. A service schedule may be:

(A) a fixed service schedule that specifies certain days, times of day, or time periods for delivery of the services; or

(B) a variable service schedule that specifies the number of authorized hours of services to be delivered per day, per week, or per month, but does not specify certain days, times of day, or time periods for delivery of the services.

(61) [(56)] Service suspension--A temporary cessation of MDCP services by a program provider or DADS without loss of program or Medicaid eligibility.

(62) [(57)] Supported employment--Assistance provided, in order to sustain competitive employment, to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(63) [(58)] Termination--An action taken by DADS that ends an authorized MDCP service or ends an individual's enrollment in MDCP.

(64) [(59)] Texas Accessibility Standards--Texas Department of Licensing and Regulation building standards adopted to meet the provisions of Texas Government Code, Chapter 469, and to meet or exceed the construction and alterations requirements of Title III of the Americans with Disabilities Act (42 U.S.C. §§12181-12189).

(65) [(60)] Third-party resources--Goods and services available to an individual from a source other than MDCP, such as Medicaid home health, Texas Health Steps Comprehensive Care Program, and private insurance.

(66) [(61)] Transition assistance services--One-time service provided to a Medicaid-eligible resident of a nursing facility

located in Texas to assist the resident in moving from the nursing facility into the community to receive MDCP services.

(67) [(62)] Working day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

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Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 438-5645



## SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND SERVICES

### DIVISION 1. ELIGIBILITY

#### 40 TAC §51.201

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §51.201. Interest List.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502596

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 438-5645



#### 40 TAC §51.201

#### STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §51.201. MDCP Interest List.

(a) DADS maintains an interest list that contains the names of applicants interested in receiving MDCP services.

(b) A person may request an applicant's name be added to the MDCP interest list by:

- (1) calling DADS toll-free number; or
- (2) submitting a written request to DADS.

(c) DADS adds an applicant's name to the MDCP interest list:

- (1) if the applicant is under 21 years of age;
- (2) resides in Texas; and
- (3) with an interest list request date as follows:

(A) for an applicant who requests to be added to the interest list in accordance with subsection (b) of this section, the date of the request;

(B) for an applicant under 21 years of age residing in a nursing facility, the date of admission to the nursing facility;

(C) for an applicant who meets the criteria in §51.213 of this subchapter (relating to Enrollment of Former Nursing Facility Residents), the date of admission to the nursing facility;

(D) for an applicant determined diagnostically or functionally ineligible for another DADS waiver program, one of the following dates, whichever is earlier:

(i) the request date of the interest list for the other waiver program; or

(ii) an existing request date for the MDCP for the applicant.

(d) DADS removes the applicant's name from the MDCP interest list if:

(1) the applicant, parent, or guardian requests in writing that the applicant's name be removed from the interest list, unless the applicant is under 21 years of age and residing in a nursing facility;

(2) the applicant moves out of Texas, unless the applicant is a military family member living outside of Texas for less than one year after the military member's active duty ends;

(3) DADS withdraws an offer of MDCP services as described in §51.211(j) of this subchapter (relating to Enrollment), unless:

(A) the applicant is a military family member living outside of Texas for less than one year after the military member's active duty ends; or

(B) the applicant is under 21 years of age and residing in a nursing facility;

(4) the applicant is a military family member living outside of Texas for more than one year after the military member's active duty ends;

(5) the applicant is deceased;

(6) the applicant reaches the 21 years of age; or

(7) DADS has denied the applicant enrollment in the MDCP and the applicant, parent, or guardian has had an opportunity to exercise the applicant's right to appeal the decision in accordance with §51.251 of this subchapter (relating to Appeals) and did not appeal the decision, or appealed and did not prevail.

(e) If DADS removes the applicant's name from the MDCP interest list in accordance with subsection (d)(1) - (4) of this section and, within 90 days after the name was removed, DADS receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) reinstates the applicant's name to the interest list based on the original request date described in subsection (c)(3)(A) - (D) of this section; and

(2) notifies the applicant, parent, or guardian in writing that the applicant's name has been reinstated to the interest list in accordance with paragraph (1) if this subsection.

(f) If DADS removes the applicant's name from the MDCP interest list in accordance with subsection (d)(1) - (4) of this section and, more than 90 days after the name was removed, DADS receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) adds the applicant's name to the interest list based on the date DADS receives the oral or written request; and

(2) notifies the applicant, parent, or guardian in writing that the applicant's name has been added to the interest list in accordance with paragraph (1) of this subsection.

(g) If DADS removes an applicant's name from the MDCP interest list in accordance with subsection (d)(7) of this section and DADS subsequently receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) adds the applicant's name to the interest list based on the date DADS receives the oral or written request; and

(2) notifies the applicant, parent, or guardian in writing that the applicant's name has been added to the interest list in accordance with paragraph (1) of this subsection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201502595

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-5645



## DIVISION 2. ENROLLMENT

### 40 TAC §§51.211, 51.213, 51.217

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

#### §51.211. Enrollment.

(a) Except as provided in subsections (b) and (c) of this section, enrollment in MDCP is limited to the number of individuals and the amount of state funding approved by the Texas Legislature.

(b) Enrollment in MDCP under the criteria described in §51.213 of this division [chapter] (relating to Enrollment of Former Nursing Facility Residents) is limited to the number of individuals DADS determines can be enrolled in MDCP under that criteria.

(c) Enrollment in MDCP under the criteria provided in subsection (d)(3) of this section is unlimited.

(d) DADS mails enrollment materials:

(1) to the applicant [person] whose name is first on the interest list described in §51.201 of this subchapter [chapter] (relating to MDCP Interest List) when MDCP Program services become [a place in the program becomes] available, unless the applicant is a military family member living outside of Texas;

(2) to an applicant [a person] who meets the criteria in §51.213 of this division [chapter] when DADS has a vacancy for a person who formerly lived in a nursing facility; or

- (3) to an applicant [a person] who:
  - (A) is under age 21;
  - (B) resides in a nursing facility located in Texas;
  - (C) is enrolled in Medicaid; and
  - (D) requests MDCP services while residing in a nursing facility located in Texas.

(e) The enrollment materials DADS mails to an applicant consist of:

(1) an interest list release notification letter identifying the individual's assigned case manager and a request for a response to confirm interest in applying for MDCP services;

(2) the Selection Acknowledgement form, to confirm interest in applying for MDCP services;

(3) an MDCP frequently asked questions (FAQ) information sheet;

(4) the Application for Assistance - Your Texas Benefits form; and

(5) the Authorization to Furnish Information form.

(f) [(e)] Within 60 [30] days after [of] the date on [of] the offer letter from DADS that accompanies the enrollment materials, an applicant [a person] or the applicant's [person's] parent or guardian must complete and return [the required enrollment materials] to DADS: [-]

(1) the Selection Acknowledgement form;

(2) the Application for Assistance - Your Texas Benefits form; and

(3) the Authorization to Furnish Information form.

(g) [(f)] DADS suspends enrollment into MDCP when DADS determines that the number of individuals and projected costs exceed funded limits in the current state fiscal year.

(h) [(g)] An individual may be enrolled in only one §1915(c) waiver program at a time.

(i) [(h)] An individual may receive services through the Medicaid-funded Personal [Primary Home] Care Services and Comprehensive Care programs while receiving MDCP services.

(j) DADS withdraws an offer of MDCP services made to an applicant if:

(1) the completed enrollment materials described in subsection (f) of this section are postmarked or faxed more than 60 days after the date on the offer letter;

(2) the applicant, parent, or guardian declines MDCP services;

(3) the applicant, parent, or guardian does not complete the enrollment process; or

(4) the applicant offered enrollment, as described in subsection (d)(3) of this section, is discharged from the nursing facility before being determined eligible for Medicaid nursing facility services and the MDCP.

§51.213. *Enrollment of Former Nursing Facility Residents.*

(a) An applicant [A person] may be enrolled in MDCP if:

(1) the applicant [person] was admitted to a nursing facility located in Texas after September 1, 1995, for long-term care purposes;

(2) the applicant [person] no longer lives in a nursing facility located in Texas; and

(3) DADS has a vacancy for an applicant [a person] who formerly lived in a nursing facility.

(b) An applicant [A person] who meets the criteria in subsection (a) of this section must also meet the criteria in §51.203 of this subchapter [chapter] (relating to Eligibility Requirements) to be determined eligible for MDCP services.

§51.217 *Individual Plan of Care.*

(a) Using a person-centered planning approach, the [The] IPC is developed by:

(1) the individual;

(2) the individual's parent or guardian;

(3) the case manager;

(4) a DADS RN; and

(5) any other person who participates in the individual's care, such as the program provider, a representative of the school system, or other third-party resource.

(b) The service initiation date on the IPC is negotiated by:

(1) the individual;

(2) the individual's parent or guardian;

(3) the Medicaid eligibility worker (if applicable);

(4) the program provider; and

(5) the case manager.

(c) The individual or the individual's parent or guardian, the individual's practitioner, and the case manager must sign the completed IPC form.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lawrence Hornsby

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Department of Aging and Disability Services

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## SUBCHAPTER D. PROVIDER REQUIREMENTS

### DIVISION 2. SERVICE DELIVERY

#### REQUIREMENTS FOR ALL PROVIDERS

##### 40 TAC §51.411

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall

study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

*§51.411. General Service Delivery Requirements.*

(a) A program provider must ensure that each service is provided in accordance with an individual's IPC and with Appendix C of the MDCP waiver application approved by CMS and found at [www.dads.state.tx.us](http://www.dads.state.tx.us).

(b) A program provider must provide respite or flexible family support services as specified on the service schedule, unless an individual changes the service schedule in accordance with §51.237 of this chapter (relating to Service Schedule Changes).

(c) A program provider must have a backup plan in case the program provider is unable to deliver respite or flexible family support services as specified on the service schedule. A backup plan must designate a service provider ~~[or a primary caregiver designee]~~ who meets the qualifications for an attendant in §51.421 of this subchapter, (relating to Requirements for Attendants providing Respite and Flexible Family Support Services), or identify a primary caregiver designee as a backup service provider. A primary caregiver may choose not to accept a backup service provider.

(d) Within 14 days after a program provider receives an initial assessment or annual reassessment service authorization form, a program provider must send the case manager a copy of the program provider's backup plan for service delivery.

(e) Within 14 days after the backup plan changes, a program provider must send the case manager a copy of the revised backup plan.

(f) Before changing the respite or flexible family support service provider type authorized in the IPC, a program provider must coordinate the change with the case manager and the individual and obtain a new service authorization form.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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**DIVISION 9. SERVICE DELIVERY  
REQUIREMENTS FOR EMPLOYEE**

**ASSISTANCE AND SUPPORTED  
EMPLOYMENT**

**40 TAC §51.485**

**STATUTORY AUTHORITY**

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021 and §161.021.

*§51.485. Service Provider Qualifications for Providing Employment Assistance and Supported Employment.*

(a) A service provider of employment assistance or ~~[and]~~ a service provider of supported employment must:

(1) be at least 18 years of age; ~~[;]~~

(2) not be:

(A) the spouse of the individual; or

(B) a parent of the individual if the individual is under 18 years of age; [legally responsible person of the individual receiving employment assistance or supported employment;] and

(3) have:

(A) ~~[(1)]~~ a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(B) ~~[(2)]~~ an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(C) ~~[(3)]~~ a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(b) A program provider must ensure that the experience required by subsection (a) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 94. NURSE AIDES

### 40 TAC §94.9

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §94.9, concerning Nurse Aide Registry and Renewal, in Chapter 94, Nurse Aides.

#### BACKGROUND AND PURPOSE

Texas Health and Safety Code, Chapter 250, requires DADS to maintain a nurse aide registry (NAR). To renew a nurse aide's active status on the NAR, HSC §250.0035(c) requires the nurse aide to complete at least 24 hours of in-service education every two years. Currently, a nurse aide is required to complete the in-service education in a nursing facility or a skilled nursing facility, or from an approved nurse aide training and competency evaluation program (NATCEP). The purpose of the proposed amendment is to allow a nurse aide to receive all or some of the required in-service education from other sources. Specifically, the amendment allows a nurse aide to receive the in-service education from DADS or up to 12 hours of in-service education from a healthcare entity (other than a nursing facility or skilled nursing facility) licensed or certified by DADS, by the Department of State Health Services (DSHS), or by the Board of Nursing (BON). If some of the hours are received from a healthcare entity licensed or certified by DADS, by DSHS, or by the BON, the remaining hours must be provided by DADS, a nursing facility, a skilled nursing facility, or an approved NATCEP.

The amendment will apply to in-service education required on or after the effective date of the amendment. In-service education required before the effective date of the amendment will be governed by the rules in effect when the in-service education was required, and the former rules will continue in effect for that purpose.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §94.9 will allow a nurse aide to receive the in-service education required to renew active status on the NAR from DADS or up to 12 hours of the in-service education from a healthcare entity, other than a nursing facility or skilled nursing facility, licensed or certified by DADS, by DSHS, or by the BON.

#### FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses.

#### PUBLIC BENEFIT AND COSTS

Mary T. Henderson, Assistant Commissioner, has determined that, for each year of the first five years the amendment is in effect, the public will benefit from rules that afford nurse aides more flexibility in completing a portion of the required in-service education.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Christy Parks at (512) 438-3791 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-14R14, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 14R14" in the subject line.

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code, Chapter 250, which requires DADS to maintain a nurse aide registry.

The amendment affects Texas Government Code, §531.0055 and §531.021, Texas Human Resources Code, §32.021 and §161.021, and Texas Health and Safety Code, Chapter 250.

§94.9. *Nurse Aide Registry and Renewal.*



(a) To be listed on the NAR as having active status, a nurse aide must successfully complete a NATCEP, as described in §94.6(i) of this chapter (relating to Competency Evaluation Requirements).

(b) DADS does not charge a fee to list a nurse aide on the NAR or to renew the nurse aide's listing of active status on the NAR.

(c) A nurse aide listed on the NAR must inform DADS of the nurse aide's current address and telephone number.

(d) A listing of active status on the NAR expires 24 months after the nurse aide is listed on the NAR or 24 months after the last date of verified employment as a nurse aide, whichever is earlier. To renew active status on the NAR, the following requirements must be met:

(1) A facility must submit a DADS Employment Verification form to DADS that documents that the nurse aide has performed paid nursing or nursing-related services at the facility during the preceding year.

(2) A nurse aide must submit a DADS Employment Verification form to DADS to document that the nurse aide has performed paid nursing or nursing-related services, if documentation is not submitted in accordance with paragraph (1) of this subsection by the facility or facilities where the nurse aide was employed.

(3) A [Effective September 1, 2013, a] nurse aide must complete at least 24 hours of in-service education every two years. The in-service education must include [that includes] training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease. The in-service education must be provided by: [; to renew a listing of active status on the NAR.]

(A) a facility;

(B) an approved NATCEP;

(C) DADS; or

(D) a healthcare entity, other than a facility, licensed or certified by DADS; by the Department of State Health Services; or by the Board of Nursing.

(4) No more than 12 hours of the in-service education required by paragraph (3) of this subsection may be provided by an entity described in paragraph (3)(iv) of this subsection. [In-service education for renewal of a listing on the NAR must be completed in a facility or an approved NATCEP.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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General Counsel

Department of Aging and Disability Services

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## PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

### CHAPTER 700. CHILD PROTECTIVE SERVICES

## SUBCHAPTER W. SERVICE LEVEL SYSTEM

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.2301, 700.2303, 700.2321, 700.2323, 700.2341, 700.2343, 700.2361, and 700.2363, in Chapter 700, Child Protective Services. The purpose of the amendments is to remove the term "developmental delays"; change the previously used terminology of "mental retardation" to described children with disabilities, and replace it with "intellectual or developmental disability"; remove the word "habilitative" from all sections and replace it with the definition of habilitative, "services that help a person keep, learn or improve skills and functioning for daily living"; add the term "sibling" to the group of people with whom a child should generally have contact; and to change the name of Subchapter W from Level-of-Care Service System to Service Level System. Also the amendments will update the affected sections of the Texas Administrative Code with person-first language for children with disabilities as encouraged by Chapter 392 of the Texas Government Code and required by Government Code §531.0227, remove the language no longer used by Residential Child Care Licensing to designate a foster home type, and promote consistency between the rules and residential child-care contract. A summary of the changes follows:

The amendment to §700.2301 revises the description of the Basic Service Level to: (1) specifically enumerate a child's sibling as a person with whom a child should generally have contact. While a child's sibling is currently within the concept of "family members" described in the rule, CPS has determined that the particular role and importance of sibling relationships should be emphasized. This change is made throughout the subchapter but not discussed in detail in the remainder of this preamble. (2) remove the term "habilitative" from the list of the types of services that may be provided to a child at the Basic Service Level and replace it with a description of the types of services that would previously have been referred to as "habilitative"

The amendment to §700.2303 revises the description of a child who needs the Basic Service Level to remove "developmental delays," remove "mental retardation," and add "intellectual or developmental disabilities" whose characteristics include minor to moderate difficulties with conceptual, social, and practical adaptive skills.

The amendment to §700.2321 revises the description of Moderate Service Level to: (1) add "siblings" to the group of people for a child to generally have contact with; (2) remove the term "habilitative" from the list of the types of services that may be provided to a child at the Moderate Service Level and replace it with a description of the types of services that would previously have been referred to as "habilitative"; and (3) remove the term "habilitative" and replace it with a description of the needs a child who requires assistance in daily functioning may have.

The amendment to §700.2323 revises the description of characteristics of a child who needs the Moderate Service Level by: (1) removing "developmental delays," removing "mental retardation," and adding "intellectual or developmental disabilities;" and (2) removing the term "habilitative" and replacing it with a description of the needs a child who requires assistance in daily functioning may have.

The amendment to §700.2341 revises the description of the Specialized Service Level to: (1) add siblings to the group of people for a child to have contact with; and (2) remove the term "habili-

tative" from the list of the types of services that may be provided to a child at the Specialized Service Level and replace it with a description of the types of services that would previously have been referred to as "habilitative".

The amendment to §700.2343 revises the description of the characteristics of a child who needs Specialized Service Level by: (1) removing "developmental delays," removing "mental retardation," and adding "intellectual or developmental disabilities;" and (2) removing the term "habilitative" and replacing it with a description of the needs a child who requires assistance in daily functioning may have.

The amendment to §700.2361 revises the description of the Intense Service Level to: (1) remove the term "habilitative" and replace it with a description of the types of services that would previously have been referred to as "habilitative"; (2) add siblings to the group of people for a child to have contact with; and (3) remove "developmental delays," remove "mental retardation," and add "intellectual or developmental disabilities."

The amendment to §700.2363 revises the characteristics of a child that needs Intense Service Level by: (1) removing "developmental delays," removing "mental retardation," and adding "intellectual or developmental disabilities;" and (2) removing the term "habilitative" and replacing it with a description of the needs of a child who requires assistance in daily function may have."

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that agency rules will be clearer to the public and they will promote the aims of inclusion of and respect toward individuals with intellectual or developmental disabilities. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Anita Lewis at (512) 438-3657 in DFPS's Child Protective Services Division. Electronic comments may be submitted to [Marieanne.Mcdonald@dfps.state.tx.us](mailto:Marieanne.Mcdonald@dfps.state.tx.us). Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-525, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

## DIVISION 1. BASIC SERVICE LEVEL

### 40 TAC §700.2301, §700.2303

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.058.

#### §700.2301. *What is the description of the Basic Service Level?*

The Basic Service Level consists of a supportive setting, preferably in a family that is designed to maintain or improve the child's functioning including:

(1) - (2) (No change.)

(3) contact, in a manner that is deemed in the best interest of the child, with siblings, family members and other persons significant to the child to maintain a sense of identity and culture; and

(4) provision of services to help the child keep, learn or improve skills and functioning for daily living, as well as [access to] therapeutic[; ~~habilitative;~~] and medical intervention and guidance from professionals or para-professionals, on an as needed basis, to help the child maintain functioning appropriate to the child's age and development.

#### §700.2303. *What are the characteristics of a child that needs the Basic Service Level?*

A child needing basic services is capable of responding to limit setting or other interventions. The children needing basic services may include:

(1) (No change.)

(2) a child with intellectual or developmental disabilities [developmental delays or mental retardation] whose characteristics include minor to moderate difficulties with conceptual, social, and practical adaptive skills.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## DIVISION 2. MODERATE SERVICE LEVEL

### 40 TAC §700.2321, §700.2323

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.058.

§700.2321. *What is the description of the Moderate Service Level?*

(a) The Moderate Service Level consists of a structured supportive setting, preferably in a family, in which most activities are designed to improve the child's functioning including:

(1) - (2) (No change.)

(3) contact, in a manner that is deemed in the best interest of the child, with siblings, family members and other persons significant to the child to maintain a sense of identity and culture; and

(4) provision of services to help the child keep, learn or improve skills and functioning for daily living, as well as [access to] therapeutic[, habilitative,] and medical intervention and guidance from professionals or para-professionals to help the child attain or maintain functioning appropriate to the child's age and development.

(b) In addition to the description in subsection (a) of this section, a child with primary medical [~~or habilitative~~] needs, or a child who requires services to help the child keep, learn or improve skills and functioning for daily living may require intermittent interventions from a skilled caregiver who has demonstrated competence.

§700.2323. *What are the characteristics of a child that needs the Moderate Service Level?*

A child needing moderate services has problems in one or more areas of functioning. The children needing moderate services may include:

(1) - (2) (No change.)

(3) a child with intellectual or developmental disabilities [developmental delays or mental retardation] whose characteristics include:

(A) - (B) (No change.)

(4) a child with primary medical [~~or habilitative~~] needs, or a child who requires services to help the child keep, learn or improve skills and functioning for daily living whose characteristics include one or more of the following:

(A) - (D) (No change.)

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### DIVISION 3. SPECIALIZED SERVICE LEVEL

#### 40 TAC §700.2341, §700.2343

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.058.

§700.2341. *What is the description of the Specialized Service Level?*

(a) The Specialized Service Level consists of a treatment setting, preferably in a family in which caregivers have specialized training to provide services to help the child keep, learn or improve skills and functioning for daily living, as well as therapeutic[, habilitative,] and medical support and interventions including:

(1) - (2) (No change.)

(3) contact, in a manner that is deemed in the best interest of the child, with siblings, family members and other persons significant to the child to maintain a sense of identity and culture; and

(4) provision of services to help the child keep, learn or improve skills and functioning for daily living, as well as therapeutic[, habilitative,] and medical intervention and guidance that is regularly scheduled and professionally designed and supervised to help the child attain functioning appropriate to the child's age and development.

(b) In addition to the description in subsection (a) of this section, a child with primary medical [~~or habilitative~~] needs or who requires services to help the child keep, learn or improve skills and functioning for daily living may require regular interventions from a caregiver who has demonstrated competence.

§700.2343. *What are the characteristics of a child that needs the Specialized Service Level?*

A child needing specialized services has severe problems in one or more areas of functioning. The children needing specialized services may include:

(1) - (2) (No change.)

(3) a child with intellectual or developmental disabilities [developmental delays or mental retardation] whose characteristics include one or more of the following:

(A) - (E) (No change.)

(4) a child with primary medical [~~or habilitative~~] needs or who requires services to help the child keep, learn or improve skills and functioning for daily living whose characteristics include one or more of the following:

(A) - (D) (No change.)

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### DIVISION 4. INTENSE SERVICE LEVEL

**40 TAC §700.2361, §700.2363**

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.058.

§700.2361. *What is the description of the Intense Service Level?*

(a) The Intense Service Level consists of a high degree of structure, preferably in a family, to limit the child's access to environments as necessary to protect the child. The caregivers have specialized training to provide services to help the child keep, learn or improve skills and functioning for daily living as well as intense therapeutic [~~and habilitative~~] supports and interventions with limited outside access, including:

(1) - (2) (No change.)

(3) contact, in a manner that is deemed in the best interest of the child, with siblings, family members and other persons significant to the child, to maintain a sense of identity and culture;

(4) provision of services to help the child keep, learn or improve skills and functioning for daily living, as well as therapeutic[; ~~habilitative;~~] and medical intervention and guidance that is frequently scheduled and professionally designed and supervised to help the child attain functioning more appropriate to the child's age and development; and

(5) (No change.)

(b) In addition to the description in subsection (a) of this section, a child with intellectual or developmental disabilities needs [~~developmental delays or mental retardation~~ needs] professionally directed, designed, and monitored interventions to enhance mobility, communication, sensory, motor, and cognitive development, and self-help skills.

(c) In addition to the description in subsection (a) of this section, a child with primary medical [~~or habilitative~~] needs or who requires services to help the child keep, learn or improve skills and functioning for daily living or requires frequent and consistent interventions. The child may be dependent on people or technology for accommodation and require interventions designed, monitored, or approved by an appropriately constituted interdisciplinary team.

§700.2363. *What are the characteristics of a child that needs the Intense Service Level?*

A child needing intense services has severe problems in one or more areas of functioning that present an imminent and critical danger of harm to self or others. The children needing intense services may include:

(1) - (2) (No change.)

(3) a child with intellectual or developmental disabilities [~~developmental delays or mental retardation~~] whose characteristics include one or more of the following:

(A) - (B) (No change.)

(4) a child with primary medical [~~or habilitative~~] needs or who requires services to help the child keep, learn or improve skills and functioning for daily living that present an imminent and critical medical risk whose characteristics include one or more of the following:

(A) - (C) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2015.

TRD-201502482

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: August 16, 2015

For further information, please call: (512) 438-3657



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

##### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

###### 10 TAC §1.5

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, §1.5, concerning Previous Participation without changes to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2357).

**REASONED JUSTIFICATION.** The purpose of this is to repeal 10 TAC, Chapter 1, Subchapter A, §1.5 and Previous Participation will be adopted in the new 10 TAC Chapter 1, Subchapter C, Previous Participation.

No comments were received during the comment period.

**STATUTORY AUTHORITY.** The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502567

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 26, 2015

Proposal publication date: May 1, 2015

For further information, please call: (512) 475-3140



##### SUBCHAPTER C. PREVIOUS PARTICIPATION

###### 10 TAC §§1.301 - 1.304

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, §§1.301 - 1.304 without changes to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2357).

**REASONED JUSTIFICATION.** The purpose of this new subchapter is to replace the Department's existing previous

participation rule which is currently found in 10 TAC, Chapter 1, Subchapter A, §1.5, which is being repealed.

Previous Participation reviews are the process used by the Department to evaluate an applicant's compliance history prior to awarding funds or entering into contracts. These reviews are required by Texas Government Code §2306.057.

No comments were received during the comment period.

**STATUTORY AUTHORITY.** The new rules are adopted pursuant to the authority of Texas Government Code §2306.053, which authorizes the Department to adopt rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502569

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 26, 2015

Proposal publication date: May 1, 2015

For further information, please call: (512) 475-3140



### CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

#### SUBCHAPTER A. GENERAL PROVISIONS

###### 10 TAC §5.2

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, §5.2, Definitions, without changes to the proposed text as published in the May 29, 2015, issue of the *Texas Register* (40 TexReg 2869).

**REASONED JUSTIFICATION.** The purpose of the amendments to this section: updates the definition of Low Income for the Emergency Solutions Grant ("ESG") program to comply with provisions of the Consolidated Appropriations Act of 2014; updates the definition of Low Income for the Homeless Housing and Services Program ("HHSP") which includes establishing that there is no procedural requirement in HHSP to verify income for persons living on the street or living in emergency shelter; to complement new 10 TAC §5.614, Deobligation and Reobligation of Awarded Funds, which the Department is concurrently adopting in order to ensure the timely and appropriate use of funds, compliance with federal accountability, programmatic requirements, and to ensure that funds are expended by required deadlines, which adds

new definitions for Awarded Funds, Contracted Funds, Deobligation, Expenditure, Production Schedule and Reobligation. Additionally, the amendment revises the definition of an Elderly Person; deletes several definitions relating to energy assistance activities which are moved to a weatherization section; and makes minor technical corrections to other definitions.

#### SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Comments were accepted from May 29, 2015, through June 29, 2015. The Department's response to all comments received is set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses.

Comments and responses are presented in the order they appear in the rules, with comments received from:

- (1) Karen Swenson, Executive Director, Greater East Texas Community Action Program
- (2) Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (TACAA)
- (3) Doug Misenheimer, Travis County

#### §5.2. Definitions

COMMENT SUMMARY (1, 2): Regarding §5.2(b)(22) - Electric Base Load Measure, commenter suggested that if the definition is applicable to WAP, it should be moved to §5.503, Definition, Chapter 5, WAP General.

STAFF RESPONSE: Staff agrees with the suggested change; however making this change at this time would necessitate taking the rule out for public comment again. The change will be made during the next rule making process.

COMMENT SUMMARY (1, 2, 3): Regarding §5.2(b)(39)(B) Low Income threshold

(1) Commenter requests that the Department increase the threshold for LIHEAP WAP to 150% of federal poverty income guidelines. The commenter's rationale:

DOE currently allows for assistance to homes at 200%. Allowing LIHEAP WAP to go to 150% of the federal maximum will allow partnering funds, therefore allowing more services to the limited number of homes we weatherize. The difference between 125% and 150% is not a significant income difference. In rural areas, weatherization is the only service many of these households will receive.

(2) Commenter requests that the Department increase the threshold for LIHEAP WAP to 150% of federal poverty income guidelines.

The commenter's rationale:

The increase is in line with federal regulations, which establishes 150% of the poverty guidelines as a maximum income level allowed in determining LIHEAP eligibility, except where 60 percent of a state's median income (SMI) is higher. Texas is one of five states at or below 125% of poverty guidelines. Eleven states are at or below 150% of federal poverty income guidelines, two states are at or below 175%, eleven states are at or below 200%, nineteen states are at SMI, and three states do not use LIHEAP funds for Weatherization. (Source: LIHEAP Clearinghouse, U.S. Department of Health and Human Services.) Of significant value is that the increase to 150% of poverty income guidelines maxi-

mizes the pooling of DOE WAP and LIHEAP WAP funds, which is a major benefit particularly in the rural areas of the state. Weatherization service providers strongly advocate for this change.

(3) Commenter requests that the Department increase the threshold for eligibility from 125% to 150% FPG.

The commenter's rationale:

Texas is one of only a few states using 125% for eligibility purposes.

(3) Commenter requests that the Department increase the threshold for eligibility for LIHEAP WAP to 200% FPG.

The commenter's rationale: none given.

STAFF RESPONSE: Staff does not recommend raising the maximum income level for LIHEAP WAP to 150% of federal poverty guidelines. Pursuant to Section 2605(b)(5) of the LIHEAP statute, the Department certifies in the State Plan that it agrees to "seek to provide, in a timely manner, that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size..." Staff believes that raising the maximum income level would not be in keeping with this certification. As part of the proposed Federal Fiscal Year 2016 LIHEAP State Plan and Application, the Department has proposed the inclusion of "categorical eligibility" for the LIHEAP WAP and the CEAP. Categorical eligibility will allow applicants whose household includes a member who receives payments under SSI and certain veteran's programs to be automatically eligible for services under LIHEAP programs; even if their income exceeds the 125% threshold. Staff believes this to be a better way to include some of the most vulnerable households that would have otherwise been ineligible for the program. Staff recommends no change to the rules at this time based on this comment.

Staff does not recommend raising the maximum income level for LIHEAP WAP to 200% of federal guidelines. In order to make this change, the Department would have to adopt all DOE WAP rules for the LIHEAP WAP. Staff believes that doing so would rob the LIHEAP WAP of the flexibility that program enjoys. Staff recommends no change to the rules at this time based on this comment.

COMMENT SUMMARY (1, 2): §5.2(b)(53) Production Schedule  
Commenter suggests alternate wording:

"A Production schedule signed by the applicable Executive Director/Chief Executive Officer of the Subrecipient, and approved by the Department meeting the requirements of this definition. The Production Schedule shall include the estimated monthly and quarterly performance targets and the estimated monthly and quarterly expenditure targets for all Contracted Funds reflecting achievement of the criteria identified in the specific program sections of this chapter by the end of the contract period. This definition does not apply to CSBG and CEAP."

The commenter's rationale:

The recommended text to include in the definition is a result of clarification provided by TDHCA staff on June 25, 2015 in which the network of Subrecipients were informed that at this point in time the production schedule does not apply to CSBG and CEAP because "criteria identified in the specific program sections" do not exist in Chapter 5. The clarification is consistent with other rules in which a rule does not pertain to certain programs.

STAFF RESPONSE: Staff does not recommend a change to the alternate wording. Staff included the wording "criteria identified in the specific program sections" to indicate that if the program section did not include criteria, then the Production Schedule does not apply to that program. Staff wishes to maintain the current wording so that should the Production Schedule become applicable to the CSBG, LIHEAP WAP, or CEAP no change to this section of the rule would be required. Staff recommends no change to the rules based on this comment.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Texas Government Code §2105.059, which authorizes the Department to adopt rules for block grant programs, §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter F, which authorizes the Department to administer its Community Affairs programs.

The adopted amendments affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502575

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 26, 2015

Proposal publication date: May 29, 2015

For further information, please call: (512) 475-0471



## SUBCHAPTER E. WEATHERIZATION ASSISTANCE PROGRAM GENERAL

### 10 TAC §5.503

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 5, §5.503, Distribution of WAP Funds, without changes to the proposed text as published in the May 29, 2015, issue of the *Texas Register* (40 TexReg 2873).

REASONED JUSTIFICATION. The purpose of the repeal is to remove the existing text in order to move definitions into a new section.

PUBLIC COMMENT: Comments were accepted from May 29, 2015, through June 29, 2015. No comments were received.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2105.059, which authorizes the Department to adopt rules for block grant programs, §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter F, which authorizes the Department to administer its Community Affairs programs.

The repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2015.

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Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-0471



### 10 TAC §§5.503 - 5.505, 5.507, 5.516, 5.525, 5.528

The Texas Department of Housing and Community Affairs (the "Department") adopts new §5.503, Definitions, and §5.504, Distribution of WAP Funds; and amendments to §5.505, Subrecipient Requirements for Appeals Process for Applicants; §5.507, Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria; §5.516, Monitoring of WAP Subrecipients; §5.525, Eligibility for Multifamily Dwelling Units; and §5.528, Health and Safety and Unit Deferral, without changes to the proposed text as published in the May 29, 2015, issue of the *Texas Register* (40 TexReg 2873).

REASONED JUSTIFICATION. The purpose of the new §5.503 and §5.504 is to relocate definitions and correct the age used for elderly in the formula to read "sixty (60)" instead of "sixty-five (65)." The purpose of the amendment to §5.505 is to delineate where appeal requirements differ between DOE WAP and LIHEAP WAP. The purpose of the amendments to §5.507 and §5.516 is to correct citation errors. The purpose of the amendment to §5.525 is to clarify eligibility for multifamily units. The purpose of the amendment to §5.528 is to clarify the Dwelling Unit weatherization deferral process.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. Comments were accepted from May 29, 2015, through June 29, 2015. The Department's response to all comments received is set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules, with comments received from:

- (1) Karen Swenson, Executive Director, Greater East Texas Community Action Program
- (2) Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (TACAA)
- (3) Doug Misenheimer, Housing Services Manager, Travis County Health and Human Services and Veterans Service

§5.528. Health and Safety and Unit Deferral

COMMENT SUMMARY (1, 2, 3): Regarding §5.528(c)(1) and (3) Commenter suggested that the rules are not in line with Building Performance Institute (BPI) guidance regarding cook stoves. Therefore, the requirements should be updated or referred to BPI guidance.

STAFF RESPONSE: Staff wishes to defer changing the rule, pending guidance from DOE regarding this issue. Should staff become confident that the rule should be changed, staff will present the proposed amendment, along with a revision to the DOE State Application and Plan to the Board at a future meeting.

STATUTORY AUTHORITY. The amendments and new rule are adopted pursuant to Texas Government Code §2306.053 which

generally authorizes the department to adopt rules, and more specifically §2306.092 which authorizes the department to establish rules and policies to administer its community affairs and community development programs.

The amendments and new sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502576

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 26, 2015

Proposal publication date: May 29, 2015

For further information, please call: (512) 475-0471



## SUBCHAPTER F. WEATHERIZATION ASSISTANCE PROGRAM DEPARTMENT OF ENERGY

### 10 TAC §5.614

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 5, §5.614, concerning Deobligation and Reobligation of Awarded Funds, with changes to the proposed text as published in the May 29, 2015, issue of the *Texas Register* (40 TexReg 2877).

**REASONED JUSTIFICATION.** These changes are being adopted in order to assure the timely and appropriate use of funds; compliance with federal accountability, transparency, and programmatic requirements; and to ensure that funds are expended by required deadlines and in a way that DOE finds to be more consistent with best practices in contract management.

#### SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Comments were accepted from May 29, 2015, through June 29, 2015. The Department's response to all comments received is set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules, with comments received from:

(1) Karen Swenson, Executive Director, Greater East Texas Community Action Program

(2) Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (TACAA)

(3) Sommer Harrison, Neighborhood Centers, Inc.

#### §5.614, Deobligation and Reobligation of Awarded Funds

**COMMENT SUMMARY (1, 2):** Regarding §5.614(b) - Commenter suggests alternate wording:

"A written 'Notification of Possible Deobligation' will be sent to the Executive Director of the Subrecipient by the Department as

soon as a criterion listed in subsection (l) of this section is at risk of being met. Written notice will be sent electronically and/or by mail. The notice will include an explanation of the criteria met. A copy of the written notice will be sent to the Board Chair seven (7) business days after the notice to the Executive Director has been released."

**Rationale:** The Executive Director needs time to contact the Board Chair and board members. Subrecipients follow notice requirements for scheduling meetings. New board members may not have the background information resulting in confusion in the community. The size of Board members of Subrecipients can range from 15 to 20-something members.

**STAFF RESPONSE:** Staff agrees with the suggested wording, with the minor change that a copy of the written notice will be sent to the Subrecipients' entire Board of Directors. The rule has been amended to reflect this change.

**COMMENT SUMMARY (1, 2):** Regarding §5.614(l) (1), (2), and (3) - Dates by which the Deobligation process is triggered

Commenter recommends the removal of specific dates referenced for the year 2015, which prompt meeting criteria for the Deobligation process. Dates in a rule become obsolete when achieved. The dates could be changed to quarters of a year or referenced in the contracts.

**STAFF RESPONSE:** Staff agrees with the recommendation. The rule has been amended to reflect this change.

**COMMENT SUMMARY (3):** Regarding §5.614 - Deobligation and Reobligation of Awarded Funds Section (m) 1-3

Commenter states that the percentage of 85% might be too high and does not leave flexibility for things that can delay the closing of a weatherized home. Commenter suggests that the Department lower the percentage near the beginning of the contract or change the evaluation timing from monthly to quarterly.

**STAFF RESPONSE:** Staff agrees to lower the percentage while maintaining monthly reporting as required by DOE. The rule has been amended to reflect this change.

**STATUTORY AUTHORITY.** The new section is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter F, which authorizes the Department to administer its Community Affairs programs.

The proposed new section affects no other code, article, or statute.

#### §5.614. *Deobligation and Reobligation of Awarded Funds.*

(a) At any time that a Subrecipient believes they may be at risk of meeting one of the criteria noted in subsection (l) of this section relating to criteria for deobligation of funds, notification must be provided to the Department unless excepted under subsection (m) of this section.

(b) A written 'Notification of Possible Deobligation' will be sent to the Executive Director of the Subrecipient by the Department as soon as a criterion listed in subsection (l) of this section is at risk of being met. Written notice will be sent electronically and/or by mail. The notice will include an explanation of the criteria met. A copy of the written notice will be sent to the Board of Directors of the Subrecipient by the Department seven (7) business days after the notice to the Executive Director has been released.

(c) Within fifteen (15) days of the date of the "Notification of Possible Deobligation" referenced in subsection (b) of this section, a



Mitigation Action Plan must be submitted to the Department by the Subrecipient in the format prescribed by the Department unless excepted under subsection (m) of this section.

(d) A Mitigation Action Plan is not limited to but must include:

(1) Explanation of why the identified criteria under this section occurred setting out all fully relevant facts.

(2) Explanation of how the criteria will be immediately, permanently, and adequately mitigated such that funds are expended during the Contract Period. For example, if production or expenditures appear insufficient to complete the Contract timely, the explanation would need to address how production or expenditures will be increased in the short- and long-term to restore projected full and timely execution of the contract.

(3) If applicable because of failure to produce Unit Production or Expenditure targets under the existing Production Schedule, a detailed narrative of how the Production Schedule will be revised, going forward, to assure achievement of sufficient, achievable Unit Production and Expenditures to ensure timely and compliant full utilization of all funds.

(4) An explanation of how the other criteria under this section will be mitigated. For example, if Unit Production criteria for a time period were not met, then the explanation will need to include how the other criteria will not be triggered.

(5) If relating to a Unit Production or expenditure criteria, a description of activities currently being undertaken including an accurate description of the number of units in progress, broken down by number of units in each of these categories: units that have been qualified, audited, assessed, contracted, inspected, and invoiced and as reflected in an updated Production Schedule.

(6) Provide any request for a reduction in Contracted Funds, reasons for the request, desired Contracted Funds and revised Production Schedule reflecting the reduced Contracted Funds.

(e) At any time after sending a Notification of Deobligation, the Department or a third-party assigned by the Department may monitor, conduct onsite-visits or other assessment or engage in any other oversight of the Subrecipient that is believed appropriate by the Department under the facts and circumstances.

(f) The Department or a third-party assigned by the Department will review the Mitigation Action Plan, and where applicable, assess the Subrecipient's ability to meet the revised Production Schedule or remedy other concern.

(g) After the Department's receipt of the Mitigation Action Plan, the Department will provide the Subrecipient a written Corrective Action Notice which may include one or more of the criteria identified in this section (relating to deobligation and other mitigating actions) or other acceptable solutions or remedies.

(h) The Subrecipient has seven (7) calendar days from the date of the Corrective Action Notice to appeal the Corrective Action Notice to the Executive Director. Appeals may include:

(1) Request to retain for the full Fund Award if Partial Deobligation was indicated;

(2) Request for only partial Deobligation of the full Contracted Fund if full Deobligation was indicated in the Corrective Action Notice;

(3) Request for other lawful action consistent with the timely and full completion of the contract and Production Schedule for all Contracted Funds.

(i) In the event that an appeal is submitted to the Executive Director, the Executive Director may grant extensions or forbearance of targets included in the Production Schedule, continued operation of a Contract, authorize Deobligation, or take other lawful action that is designed to ensure the timely and full completion of the Contract for all Contracted Funds.

(j) In the event the Executive Director denies an appeal, the Subrecipient will have the opportunity to have their appeal presented at the next Department Board meeting for which the matter may be posted in accordance with law and submitted for final determination by the Board.

(k) In the event an appeal is not submitted within seven (7) calendar days from the date of the Corrective Action Notice, the Corrective Action Notice will automatically become final without need of any further action or notice by the Department, and the Department will amend/terminate the contract with the Subrecipient to effectuate the Corrective Action Notice.

(l) The criteria noted in this subsection will prompt the Deobligation process under this rule. If the criteria are met, then notification and ensuing processes discussed elsewhere in this subchapter will apply.

(1) Subrecipient fails to provide the Department with a Production Schedule for their current Contract within 30 days of receipt of the draft contract. The Production Schedule must be signed by the Subrecipient Executive Director/Chief Executive Officer and approved by the Department;

(2) By the third program reporting deadline, Subrecipient must report at least one unit weatherized and inspected by a certified Quality Control Inspector ("QCI");

(3) By the fifth program reporting deadline, less than 25% of total expected unit production has occurred based on the Production Schedule, or less than 20% of total Awarded Funds have been expended;

(4) By the seventh program reporting deadline, less than 50% of total expected unit production has occurred based on the Production Schedule, or less than 50% of total Awarded Funds have been expended;

(5) The Subrecipient fails to submit a required monthly report explaining any variances between the Production Schedule and actual results on Production Schedule criteria;

(m) Notification of deobligation will not be required to be sent to a Subrecipient, and a Mitigation Action Plan will not be required to be provided to the Department, if any one or more of the following are satisfied:

(1) The total cumulative unit production for the Subrecipient, based on the monthly report as reported in the Community Affairs contract system, is at least 75% of the total cumulative number of units to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule for the time period applicable (i.e. cumulative through the month for which reporting has been made).

(2) The total cumulative expenditures for the Subrecipient, based on the monthly report as reported in the Community Affairs contract system, is at least 75% of the total cumulative estimated expenditures to be expended as of the end of the month according to the Subrecipient's forecast expenditures within the Production Schedule for the time period applicable (i.e. cumulative through the month for which reporting has been made).

(3) The Subrecipient's monthly reports as reported in the Community Affairs contract system, for the prior two months, as required under the contract between the Department and the Subrecipient, reflects unit production that is 80% or more of the unit production amount to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502577

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 26, 2015

Proposal publication date: May 29, 2015

For further information, please call: (512) 475-0471



## TITLE 22. EXAMINING BOARDS

### PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

#### CHAPTER 75. LICENSES AND RENEWALS

##### 22 TAC §75.5

The Texas Board of Chiropractic Examiners (Board) adopts amendment to Chapter 75, §75.5, concerning Licenses and Renewals, without changes to the proposed text as published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2160) and will not be republished.

This section establishes requirements and procedures related to licenses and renewal.

The amendment permits more continuing education hours to be available through online mechanisms.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502552

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Effective date: July 26, 2015

Proposal publication date: April 17, 2015

For further information, please call: (512) 305-6715

##### 22 TAC §75.6

The Texas Board of Chiropractic Examiners (Board) repeals Chapter 75, §75.6, concerning Failure to Meet Continuing Education Requirements, without changes to the proposed text as published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2162) and will not be republished.

The repeal is necessary in order to clarify, restructure and draft a new rule regarding Board procedures to provide concise and clear guidance to the public and licensees.

No comments were received regarding the adoption of the repeal.

This section is repealed under the Texas Occupations Code §201.152, which authorizes the Board to adopt rules concern the regulation of chiropractic.

No other statutes, articles, or codes are affected by the repeal.

§75.6. *Failure to Meet Continuing Education Requirements.*

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 2015.

TRD-201502519

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Effective date: July 22, 2015

Proposal publication date: April 17, 2015

For further information, please call: (512) 305-6715



##### 22 TAC §75.6

The Texas Board of Chiropractic Examiners (Board) adopts new Chapter 75, §75.6, concerning Failure to Meet Continuing Education Requirements, without changes to the proposed text as published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2162) and will not be republished.

The new rule is necessary in order to clarify, restructure and draft a new rule regarding Board procedures to provide concise and clear guidance to the public and licensees.

No comment were received regarding adoption of the new rule.

This new rule is adopted under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the new rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 2015.

TRD-201502521

Bryan Snoddy  
General Counsel  
Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6715



## CHAPTER 77. PROFESSIONAL CONDUCT

### 22 TAC §77.9

The Texas Board of Chiropractic Examiners (Board) adopts amendment to Chapter 77, §77.9, concerning Out-of-Facility Practice, without changes to the proposed text as published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2165) and will not be republished.

This section established requirements and procedures related to professional conduct.

The amendment provides benefits to the public by making an exception for licensees on filing documentation with the Board when offering pro bono services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6715



## CHAPTER 78. RULES OF PRACTICE

### 22 TAC §78.6

The Texas Board of Chiropractic Examiners (Board) adopts amendment to Chapter 78, §78.6, concerning Required Fees and Charges, without changes to the proposed text as published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2166) and will not be republished.

This section established requirements and procedures related to rules of practice.

The amendment permits the Board to offer additional new licensee webinar course to enhance the education and professional practice of chiropractors at a nominal cost.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bryan Snoddy  
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Texas Board of Chiropractic Examiners  
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## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 9. TITLE INSURANCE SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

##### 28 TAC §9.2

The commissioner of insurance adopts new 28 TAC §9.2, which adopts by reference a new procedural rule (Rule P-73) and form (Form T-64) as amendments to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*. The form is an addendum--the Texas Disclosure--to the new federal Closing Disclosure form (Closing Disclosure). The procedural rule requires settlement agents to use the Texas Disclosure. The Closing Disclosure helps consumers understand the costs associated with closing on a mortgage loan. The Texas Disclosure is necessary to provide a clear and complete disclosure of costs related to closing and title insurance in Texas.

The commissioner adopts the amendments with a change to Form T-64, which was proposed in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2391). TDI made a change to the form in response to comment.

**REASONED JUSTIFICATION.** The Dodd-Frank Wall Street Reform and Consumer Protection Act directed the Consumer Financial Protection Bureau (CFPB) to propose a single disclosure form that combines the requirements of the HUD-1 and the final Truth-in-Lending disclosure forms. See Dodd-Frank Act §1098 and §1100A, codified at 12 U.S.C. §2603(a) and 15 U.S.C. §1604(b), respectively. In response, the CFPB created the Closing Disclosure and will require settlement agents to use this form in place of the two previous forms.

Some of the changes in the Closing Disclosure conflict with Texas closing requirements and practices. When the CFPB integrated the HUD-1 and the final Truth-in-Lending disclosure to create the new Closing Disclosure, it removed or combined

items that were listed individually on the HUD-1. For example, the current HUD-1 includes a section to disclose portions of the real estate commission paid to third parties, but the Closing Disclosure does not. The Texas Disclosure will require agents to list portions of the premium or real estate commission paid to third parties. The Texas Disclosure requires settlement agents to separately itemize other fees and charges paid to the real estate agent that may have been aggregated on the Closing Disclosure. The Texas Disclosure also adds a signature line, authorizing the settlement agent to disburse the funds.

In addition, the Texas Disclosure is necessary to show the actual price for title insurance in a simultaneous-issue transaction in Texas. In approximately half the states, including Texas, title companies offer a discount on the loan policy when both a loan policy and an owner's policy are purchased in a single transaction. However, the instructions for the Closing Disclosure require the agent to list the loan policy at the full, undiscounted premium and to show the simultaneous-issue discount as if it applied to the owner's policy instead. In Texas and other states, this requirement will cause the owner's and loan policy premiums on the Closing Disclosure to differ from the actual amounts charged for each policy.

This scenario becomes even more confusing for consumers in Texas, as well as in 30 other states, where the seller pays, or is likely to pay, for the owner's policy. Because the Closing Disclosure requires the agent to apply the simultaneous-issue discount to the owner's policy rather than the loan policy, the form will inaccurately state the seller's contribution to the title insurance costs. Further, by showing the higher-priced full loan policy amount rather than the discounted loan policy amount, the borrower's cash-to-close number in the Closing Disclosure is rendered inaccurate and overstated.

Complete disclosures not only help consumers understand real estate transaction costs, they also help TDI auditors verify that agents comply with state law. Texas Insurance Code §2502.051 and the *Basic Manual* prohibit rebates, discounts, and overcharges. By detailing the amounts charged on the Texas Disclosure, agents can show auditors that no rebates, discounts, or overcharges occurred.

For example, TDI's rate rules set the premium that settlement agents must charge for each title insurance policy and endorsement. To ensure that agents are not reducing premiums through escrow fee discounts, auditors must know exactly how much was charged for both the title policy and the escrow fee. The primary way for settlement agents to show they are not charging discounted rates or fees will be by disclosing the escrow fees and other fees paid to the settlement agent on the Texas Disclosure.

Section V of the *Basic Manual*, Specific Areas and Procedures #5, addresses overcharges, requiring that charges for pass-through expenses--such as courier fees, recording fees, and tax certificate fees--equal the cost to the title agency and are not marked up. Title agents have traditionally disclosed each of these pass-through expenses, as well as fees paid to the agent and all other charges, on the HUD-1 settlement statement to show consumers and auditors that they are not overcharging. The Texas Disclosure will allow title agents to continue this practice.

The Texas Disclosure will not replace the Closing Disclosure, but will accompany it whenever agents are required to use the Closing Disclosure. The Texas Disclosure is not designed to function as a "settlement statement," nor does it include all fees

and charges in connection with a settlement. The purpose of the Texas Disclosure is to allow settlement agents in Texas to meet state disclosure requirements, and to provide clear and accurate disclosure of costs related to closing and title insurance in Texas.

The new procedural rule and Texas Disclosure form become effective on August 1, 2015. The federal Closing Disclosure is set to take effect on August 1, 2015. However, on June 17, 2015, the CFPB announced that it intends to propose to delay implementation until October 2015. This rule will not be affected either way because the Texas Disclosure is only required when the federal form is required.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

At the public hearing, two commenters expressed support for the proposal. Both commenters testified that the Texas Disclosure would clarify real estate transactions, helping consumers understand their transactions better.

Comment: A commenter asks that the new Texas Disclosure Form T-64 be amended to change the field, "Property Address" to "Property" to match the Closing Disclosure form.

Agency Response: TDI agrees, and has changed the name of the field from "Property Address" to "Property." This section of the Texas Disclosure was intended to match the Closing Disclosure form. Further, this change will allow property that does not have an address, such as undeveloped land, to be listed by its legal description.

#### NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For, With Changes: Texas Land Title Association; Janet Minke, Alliant National Title Insurance Company.

Against: None.

STATUTORY AUTHORITY. TDI adopts 28 TAC §9.2 under Insurance Code §§2551.003, 2703.002, 2703.208, and 36.001.

Section 2551.003 authorizes the commissioner to adopt and enforce rules that the commissioner determines are necessary to accomplish the purposes of Title 11, Insurance Code, concerning the regulation of title insurance.

Section 2703.002 provides that a title insurance company or title insurance agent may not use a form required under Title 11 to be prescribed or approved until the commissioner has prescribed or approved the form.

Section 2703.208 states that an addition or amendment to the *Basic Manual* may be proposed and adopted by reference by publishing notice of the proposal or adoption by reference in the *Texas Register*.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

#### §9.2. *Texas Disclosure.*

The Texas Department of Insurance adopts by reference Form T-64 and Procedural Rule P-73 as part of the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* as amended, effective August 1, 2015. The documents are available from the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The documents are also available on the TDI website at [www.tdi.texas.gov](http://www.tdi.texas.gov).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2015.

TRD-201502565

Sara Waitt

General Counsel

Texas Department of Insurance

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Proposal publication date: May 1, 2015

For further information, please call: (512) 676-6584



## CHAPTER 21. TRADE PRACTICES SUBCHAPTER MM. WELLNESS PROGRAMS

### 28 TAC §§21.4701 - 21.4708

The Texas Department of Insurance adopts amendments to 28 TAC Chapter 21, Subchapter MM, §§21.4701 - 21.4707 and new §21.4708, concerning wellness programs. The amendments and new sections are adopted without changes to the proposed text published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2168).

**REASONED JUSTIFICATION.** The amendments and new section reflect updates adopted in the federal regulations addressing wellness programs, which are located in the U.S. Code of Federal Regulations at 45 CFR Parts 146 and 147.

The amendments to §§21.4701 - 21.4707 and new §21.4708 are necessary because before this adoption the Texas regulations were more restrictive than necessary in regard to options and incentives carriers and employers may provide to insureds in wellness programs and were no longer aligned with the comparable federal regulations. The Texas regulations were also unclear regarding applicability to health maintenance organization coverage, and they were inconsistent with the federal regulations in how the types of wellness programs were addressed.

In 2007, following the adoption of federal statutes and regulations addressing wellness programs, the Texas Legislature adopted Insurance Code §1501.107, which authorizes a small or large employer health benefit plan issuer to offer a plan participant an incentive for participating in a plan's wellness program. In 2009, TDI adopted the wellness rules in 28 TAC Subchapter MM to meet minimum federal requirements to maintain the state's regulation of wellness programs. In 2010, Congress amended the federal statutes addressing wellness programs, and the U.S. Department of Health and Human Services issued conforming federal regulations in June 2013. Those federal regulations became effective January 1, 2014. With the adoption of the federal regulations, Texas rules for wellness programs became inconsistent with the federal requirements.

The federal regulations are applicable to small and large employer coverage, individual and group coverage, and health maintenance organization coverage. However, before the amendments adopted in this order, the Texas rules only addressed small and large employer coverage. Amendments to §§21.4701, 21.4703, and 21.4704 are necessary to address all the types of coverage addressed by the federal regulations.

The federal regulations now permit rewards of up to 30 percent of the value of the premium for participation in wellness

programs (and up to 50 percent for programs designed to prevent or reduce tobacco use), while prior to this adoption order, §21.4707(1) only permitted a maximum reward of 20 percent of the value of the premium. Amendments to §21.4707 are necessary to allow health benefit plan issuers in Texas to offer the full reward permissible under the federal regulations.

Under the federal regulations, a participant must receive the full wellness reward even if it takes the participant an extended time to satisfy the carrier's alternative wellness standards. However, prior to this adoption order, §21.4707(4)(ii) allowed health benefit plan issuers to require a participant to meet alternative standards in the same amount of time as under the standard program. Amendments to §21.4707 are necessary to harmonize the section with the federal regulations.

The federal regulations have three categories of programs: those that are participatory only, those that require activity, and those that require health-related outcomes. The federal regulations also only permit participatory programs in the individual health insurance market. Before this adoption order, Texas rules lumped activity and outcome programs together and permitted them in all markets. Amendments to §21.4707 and new §21.4708 are necessary to make the Texas rule consistent with the federal regulations.

Under the federal regulations, outcome-based wellness programs must automatically provide access to alternative wellness standards for a participant who does not meet the plan's primary standard, regardless of whether the participant has a medical condition making it unreasonably difficult or medically inadvisable to satisfy the regular standard. However, prior to this adoption order, §21.4707 permitted a carrier to require that a participant demonstrate that meeting the plan's regular standard is unreasonably difficult. Amendments to §21.4707 and new §21.4708 are necessary to make the Texas rules consistent with the federal regulations.

The federal regulations require, in some instances, that a plan must accommodate a participant's personal physician's recommendation for reasonable alternative standards and that this must be disclosed to the participant. Prior to this adoption order, §21.4707 did not require a carrier to heed a physician's recommendation. As amended, §21.4707 harmonizes the state and federal rules.

The federal rules permit carriers to require verification by a physician for activity-only programs but do not permit it for outcome programs. Prior to this adoption order, §21.4707 permitted verification requirements for all programs. Amendments to §21.4707 and new §21.4708 are necessary to make the Texas rules consistent with the federal regulations.

The federal regulations provide sample notice language that differed from the sample notice language in §21.4707 as the section existed prior to this adoption order. It was necessary to remove the sample notice language in §21.4707 to avoid the conflict between §21.4707 and the federal regulations.

Amendments to §21.4701 expand applicability of Subchapter MM to include individual and group accident and health insurance policies and health maintenance organization evidences of coverage by inserting references to these types of coverage. In addition, amendments to §21.4703 and §21.4704 insert references to individual and group accident and health insurance policies and health maintenance organization evidences of coverage. Amendments throughout the sections also make nonsub-

stantive changes to the rule text for consistency with current TDI rule drafting style.

Amendments to §21.4707 revise the section heading to address "activity-only wellness programs." An amendment to the section places the existing text of the section into subsection (b) and adds new subsection (a) in front of the existing text to clarify that a health-contingent wellness program that requires an individual to perform or complete an activity related to a health factor in order to obtain a reward, but that does not require the individual to attain or maintain a specific health outcome, is an activity-only wellness program. Amendments to §21.4707 also revise the existing text of the section to address activity-only wellness programs to track the related provision in the federal regulations. Amendments revise text addressing the size of reward, increasing the maximum value from 20 to 30 percent, and allowing a reward of up to 50 percent for programs designed to prevent or reduce tobacco use. The amendments also revise the text of provisions in the section addressing reasonable design, frequency of opportunity to qualify, uniform availability and reasonable alternative standards, and notice of availability of reasonable alternative standards. Finally, an amendment deletes from the text the specific language that could be used to satisfy the notice requirement.

New §21.4708 addresses outcome-based wellness programs and tracks federal requirements for this type of wellness program. Subsection (a) of the section clarifies that "a health-contingent wellness program that requires an individual to attain or maintain a specific health outcome in order to obtain a reward is an outcome-based wellness program." Subsection (b) lists the requirements for an outcome-based wellness program, addressing size of reward, reasonable design, frequency of opportunity to qualify, uniform availability and reasonable alternative standards, and notice of availability of reasonable alternative standard.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.** TDI received no comments in response to the proposed text published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2168).

**STATUTORY AUTHORITY.** The amendments and new section are adopted under Insurance Code §§843.151, 1201.106, 1201.013, 1501.002, 1501.010, 1501.107, and 36.001.

Section 843.151 authorizes the commissioner to adopt reasonable rules as necessary to implement Insurance Code Chapter 843, and it includes authority for the commissioner to adopt rules necessary to meet the requirements of federal law and regulations.

Section 1201.006 authorizes the commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of Chapter 1201, relating to the regulation of accident and health insurance.

Section 1201.013 provides that an insurer issuing an accident and health insurance policy may establish premium discounts, rebates, or a reduction in otherwise applicable copayments, coinsurance, or deductibles, or any combination of these incentives, for an insured who participates in programs promoting disease prevention, wellness, and health, and that a discount, rebate, or reduction established under this section does not violate Insurance Code §541.056(a).

Section 1501.010 defines "health benefit plan" to include evidence of coverage issued by a health maintenance organization that provides benefits for health care services.

Section 1501.010 authorizes the commissioner to adopt rules as necessary to implement Chapter 1501 to meet the minimum requirements of federal law.

Section 1501.107 provides that a small or large employer health benefit plan issuer may establish premium discounts, rebates, or a reduction in otherwise applicable copayments, coinsurance, or deductibles, or any combination of these incentives, in return for participation in programs promoting disease prevention, wellness, and health. A discount, rebate, or reduction established under this section does not violate Insurance Code §541.056(a).

Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of Texas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 2015.

TRD-201502496

Sara Waitt

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Texas Department of Insurance

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For further information, please call: (512) 676-6584

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 55. LAW ENFORCEMENT SUBCHAPTER G. BOAT SPEED LIMIT AND BUOY STANDARDS

##### 31 TAC §§55.302 - 55.304

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 26, 2015 adopted amendments to §§55.302 - 55.304, concerning Boat Speed Limit and Buoy Standards, without changes to the proposed text as published in the February 20, 2015, issue of the *Texas Register* (40 TexReg 786).

The amendments correct an inaccurate name and citation of applicable federal law and conform definitions. Texas water safety requirements for public water are primarily established by the Texas Legislature in Chapter 31 of the Parks and Wildlife Code (also referred to as the "Water Safety Act"). Under Parks and Wildlife Code, §31.091, the Texas Legislature expressly reserved to the state the basic authority to regulate boating. Similarly, under Parks and Wildlife Code, §31.002, the Texas Legislature has established the duty of the state to promote recreational water safety and the uniformity of laws relating to water safety. In Parks and Wildlife Code, §31.142, the Texas

Legislature delegated to the Parks and Wildlife Department (the department) authority to "provide for a standardized buoy-marking program for the inland water of the state."

In order to establish uniformity of regulations regarding navigation markers such as buoys, the department utilizes the standards of the United States Coast Guard. The current rule references the Uniform State Waterway Buoy Marking System contained in 33 CFR §62.33; however, the U.S. Coast Guard in 1998 eliminated the Uniform State Waterway Buoy Marking System and replaced it with the U.S. Aids to Navigation System. The reference in the current rule to the Code of Federal Regulations is also outdated, since the entirety of 33 CFR Part 62 is applicable to navigation of the public water of the state. The amendments therefore replace the current references with updated references and remove a definition made unnecessary as a result of the updates.

The amendments as adopted will function by providing accurate references to federal rules that serve as the basis for the state's uniform buoy marking system.

The department received no comments opposing adoption of the proposed amendments.

The department received 10 comments supporting adoption of the proposed amendments.

No groups or associations commented on the proposed amendments.

The amendments are adopted under the authority of Parks and Wildlife Code, §31.142, which authorizes the department to provide for a standardized buoy-marking program for the inland water of the state. The amendments are proposed in conformity with §31.002, which establishes the duty of the state to promote recreational water safety and the uniformity of laws relating to water safety; and §31.091, which reserves the basic authority to regulate boating to the state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 3, 2015.

TRD-201502533

Ann Bright

General Counsel

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Proposal publication date: February 20, 2015

For further information, please call: (512) 389-4775



## CHAPTER 57. FISHERIES

### SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 26, 2015 adopted amendments to §§57.974, 57.981, and 57.992, concerning the Statewide Recreational and Commercial Fishing Proclamations, without changes to the proposed text as published in the February 20, 2015, issue of the *Texas Register* (40 TexReg 787).

The amendment to §57.974, concerning Reservoir Boundaries, clarifies the reservoir boundary of Falcon International Reservoir. The amendments to §57.981 and §57.992 create an exception to the statewide bag limit for alligator gar on Falcon International Reservoir; therefore, it is necessary to specify the exact geographic extent to which the exception applies. The amendment establishes the boundary of Falcon International Reservoir as "all impounded waters of the Rio Grande from the Falcon Dam upstream to the Zapata/Webb County line."

The amendments to §57.981 and §57.992 concerning Bag, Possession, and Length Limits (for recreational fishing and commercial fishing, respectively), eliminates the traditional tabular format and replaces it with the standard structural format typical of other regulations. The amendments move these regulations from graphics/tables to a standard text format. This change is intended to eliminate problematic aspects associated with the production and submission of graphics. Except as noted, the provisions are nonsubstantive.

The amendment to §57.981(d)(1), concerning Bag, Possession, and Length Limits, modifies harvest regulations for largemouth bass on Braunig and Calaveras reservoirs in Bexar County. Currently, harvest regulations for largemouth bass include an exception to the statewide size and bag limits for Braunig and Calaveras reservoirs. Current harvest regulations for largemouth bass on these reservoirs consist of an 18-inch minimum length and five fish daily bag limit. By eliminating the exception for these two reservoirs, the length limit will revert to the standard statewide 14-inch minimum limit. The current regulations were implemented in 1995, and the reservoirs were managed for trophy bass. In the 1990s, the bass populations began to exhibit reproduction problems, and bass stocking and habitat improvement was implemented to improve the populations. Despite the regulation change, habitat improvement projects, and stocking, the largemouth bass populations and fisheries at both reservoirs have not improved. Since 1999, few bass 18 inches and larger have been collected in department electrofishing samples. In recent surveys of anglers, only 4-5 % of angling effort was expended for bass at both reservoirs, and angler catch rates were poor. The 18-inch limit did not improve angling in the reservoirs and the change is expected to have minimal impact on the bass populations or angling in either reservoir.

The amendment to §57.981(d) also modifies harvest regulations for largemouth bass on Lake Nasworthy in Tom Green County. Current harvest regulations for largemouth bass on Lake Nasworthy consist of the statewide standard of 14-inch minimum length limit and a five-fish daily bag limit. The amendment adds Lake Nasworthy to lakes and reservoirs listed in §57.981(d)(C)(vii) for which there is a 14- to 18-inch slot limit (no harvest between 14 and 18 inches). Largemouth bass in Lake Nasworthy have had a history of slow growth. The relatively stable water levels have resulted in stable and abundant bass recruitment. Since at least 2004 bass age and growth data has consistently shown a bottleneck at approximately 12-14 inches. Angling activity at the reservoir consists of bank anglers and anglers who do not find one species more desirable than others. Local staff made presentations to three San Angelo bass clubs in 2013-2014 about the bass growth problems and potential regulation changes, and the bass anglers support making a regulation change. They also expressed willingness to harvest fish under 14 inches in length if it would help the overall population. Respondents in an online opinion survey were receptive to potential changes (68% supported a 14-18 inch slot length limit). The regulation allows harvest of fish in the bottleneck

size range, which could alleviate the intraspecific competition that is restricting growth. The regulation also protects more of the larger bass (14-18 inches) while allowing some harvest and retention of bass for tournament weigh-ins. Size structure of the bass population is expected to become more balanced with more fish over 14 inches.

The amendment to §57.981 also affects harvest regulations for smallmouth bass on O.H. Ivie Reservoir in Coleman, Concho, and Runnels counties. Current harvest regulations for smallmouth bass include an exception to the statewide size and bag limits for O.H. Ivie Reservoir and two other water bodies consisting of an 18-inch minimum length and three-fish daily bag limit. By eliminating O.H. Ivie Reservoir from this exception (contained in §57.981(d)(1)(D)(i)), the limits on O.H. Ivie will revert to the statewide standard 14-inch minimum limit and five-fish daily bag. O. H. Ivie Reservoir was stocked with smallmouth bass once after its impoundment in 1990 and a small population has been present since then. Smallmouth bass are encountered sporadically in fish population surveys and anglers do not specifically target the species. Because abundance of smallmouth bass is low and the fishery is minimal, the 18-inch limit on smallmouth bass has not been effective. O. H. Ivie bass anglers have expressed the desire to retain incidentally-caught smallmouth bass for tournament weigh-ins, but they rarely catch any smallmouth bass over 18 inches. Reversion to the statewide standard 14-inch minimum length limit will allow more incidentally-caught smallmouth bass to be entered into fishing tournaments, increasing angler satisfaction with little to no impact on the overall fisheries at the reservoir.

The amendment to §57.981 also modifies harvest regulations for alligator gar for Falcon International Reservoir. An exception to the current daily bag limit of one alligator gar as specified in §57.981(c)(5)(I), be added as §57.981(d)(1)(N) to allow a recreational daily bag limit of five alligator gar for Falcon International Reservoir. The increased bag limit will be in effect in all impounded waters of the Rio Grande from the Falcon Dam upstream to the Zapata/Webb County line. Anglers and stakeholders have expressed interest in management of alligator gar in recent years. In response, TPWD conducted a comprehensive study in 2014 to obtain biological information necessary to make management recommendations for the species at this locale. Most (88%) anglers who target the species reside within 1.5 hours of the reservoir. The fishery is primarily harvest oriented, but harvesting a trophy-size alligator gar was not a highly important motivation. Most anglers (gar and non-gar anglers) desire an increase in the daily bag limit. A simulation model was used to assess the potential impact of harvest rate on the sustainability of the population and trophy-size fish. The harvest rate is currently estimated to be 1% or less, based the estimated gar harvest on Falcon Lake and in comparison with harvest data from nearby Choke Canyon Reservoir. A substantial buffer exists between the current harvest rate and the harvest rate at which overfishing might occur (7%). An increase in the daily bag limit poses minimal risk to population sustainability and trophy fish abundance and allows anglers to harvest more alligator gar. The amendment also creates a five-year limit to evaluate the effect of the provision.

Also, the amendment to §57.981 alters subsection (c)(5)(I)(iv) to clarify that in addition the prohibition on the "take" of alligator gar during May from Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the I.H. 35 bridge, no person "shall fish for or seek to take" alligator gar in that area.

The amendment to §57.992 modifies harvest regulations for alligator gar for Falcon International Reservoir. An exception to the current daily bag limit of one alligator gar as specified in §57.992(b)(4)(G)(i)(II), is added as §57.992(b)(4)(G)(i)(I) to allow a commercial daily bag limit of five alligator gar for Falcon International Reservoir, for the same reasons contained in the discussion of the amendment to §57.981.

In addition to the formatting changes discussed elsewhere in this preamble, the amendment to §57.992 alters subsection (b)(4)(F) to clarify that in addition to the prohibition on the "take" of alligator gar during May from Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the I.H. 35 bridge, no person "shall fish for or seek to take" alligator gar in that area.

The department received two comments opposing adoption of the portion of proposed §57.992 that affects harvest regulations for largemouth bass on Braunig and Calaveras reservoirs in Bexar County. Neither commenter provided a reason or rationale for opposing adoption. No changes were made as a result of the comments.

The department received 60 comments supporting adoption of the portion of proposed §57.992 that affects harvest regulations for largemouth bass on Braunig and Calaveras reservoirs in Bexar County.

The department received two comments opposing adoption of the portion of proposed §57.992 that affects harvest regulations for largemouth bass on Lake Nasworthy in Tom Green County. Neither commenter provided a reason or rationale for opposing adoption. No changes were made as a result of the comments.

The department received 52 comments supporting adoption of the portion of proposed §57.992 that affects harvest regulations for largemouth bass on Lake Nasworthy in Tom Green County.

The department received two comments opposing adoption of the portion of proposed §57.992 that affects harvest regulations smallmouth bass on O.H. Ivie Reservoir in Coleman, Concho, and Runnels counties. Neither commenter provided a reason or rationale for opposing adoption. No changes were made as a result of the comments.

The department received 55 comments supporting adoption of the portion of proposed §57.992 that affects harvest regulations for smallmouth bass on O.H. Ivie Reservoir in Coleman, Concho, and Runnels counties.

The department received 13 comments opposing adoption of the portion of proposed §57.992 that affects harvest regulations for alligator gar for Falcon International Reservoir. Of the 13 comments, nine articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Three commenters opposed adoption and stated that the proposed daily bag limit of five fish was too high. The department disagrees with the comments and responds that department simulation models indicate that a daily bag limit of five fish can be implemented without negative population impacts. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the daily bag limit should be higher in order to improve the bass fishery. The department disagrees with the comment and responds that the increase in the bag limit is intended to increase angling opportunity. Department research indicates that the bass fishery in Lake



Falcon is not negatively impacted by alligator gar predation. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the commercial take of alligator gar should be by weight until the bass fishery improves. The department disagrees with the comment and responds that perceived declines in the bass fishery on Lake Falcon are primarily the result of environmental conditions resulting from prolonged drought, not alligator gar. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule change should take effect immediately. The department disagrees with the comment and responds that the department ordinarily establishes a September 1 effective date unless there is a compelling biological reason not to do so. The department is unaware of any biological reason to make the provisions regarding alligator gar effective prior to September 1. No changes were made as a result of the comment.

The department received 59 comments supporting adoption of the portion of proposed §57.992 that affects harvest regulations for alligator gar for Falcon International Reservoir.

No groups or associations commented on the proposed amendments.

## DIVISION 1. GENERAL PROVISIONS

### 31 TAC §57.974

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to take or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ann Bright

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Texas Parks and Wildlife Department

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## DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

### 31 TAC §57.981

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to take or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible,

the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

The adopted amendment affects Parks and Wildlife Code, Chapter 61.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

### 31 TAC §57.992

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to take or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

### SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

#### 31 TAC §58.11, §58.21

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 21, 2015 adopted amendments to §58.11 and §58.21, concerning the Statewide Oyster Fishery Proclamation, without changes to the proposed text as published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2173).

The amendments are intended to maximize oyster production by minimizing the removal of substrate (shell that is used by juvenile oysters).

The amendment to §58.11, concerning Definitions, alters the definition of "sack of oysters" to include "dead oyster shell."

The amendment to §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules, requires dead oyster shell measuring greater than 3/4 inch along any axis to be returned to the reef at the time of harvest and stipulates that each dead oyster shell measuring greater than 3/4 inch be counted as an undersized oyster for purposes of complying with the provisions of subsection (b)(4), which limits undersized oysters to no more than 15% of a cargo.

Over the past decade, many of the state's oyster reefs have been depleted and hundreds of thousands of cubic yards of cultch (material, such as oyster shell, that furnishes a place for larval oysters to attach and grow to maturity) have been removed from the state's public oyster reefs as a consequence of oyster dredging. The majority of the cultch removed from public reefs is not recovered, often being shipped out of state to be shucked or used as roadbed construction fill or feed additive in commercial poultry operations. The continuing sustained or increased removal of shell from oyster habitat poses a threat to the viability of the state's oyster fishery, because a reduction in the cultch that juvenile oysters depend on for growth results in less recruitment and, potentially, fewer legal-sized oysters. The Parks and Wildlife Department (the department) has received requests from the regulated community to address this issue.

The amendments will function by protecting a public resource from degradation.

The department received 16 comments opposing adoption of the proposed amendments. Of those comments, six provided a reason or rationale for opposing adoption.

One commenter opposed adoption and stated that if the rules are intended to prevent private lease-holders from using shell from public reefs, the program is broken. The department disagrees with the comment and responds that the rules are intended to improve the entire oyster fishery by preventing the deleterious removal of shell for any reason. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the amendments will result in the excess culling of small oysters. The department disagrees with the comment and responds that undersized oysters are required to be returned to the reef; the choice to retain oysters that are small but lawful to possess is up to the licensee. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that dealers, buyers, and fish houses should be responsible for ensuring that undersized oysters and shell are not bought. The department disagrees with the comment and responds that the most biologically efficacious way to ensure the ability of returned oysters to survive and dead shell to be used as cultch is for the point of return to be as close as possible in time and distance to the time and place of harvest. No changes were made as a result of the comments.

The department received 38 comments supporting adoption of the proposed amendments.

No groups or associations commented on the proposed amendments.

The amendments are adopted under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase, and sale of oysters.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ann Bright

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## SUBCHAPTER B. STATEWIDE SHRIMP FISHERY PROCLAMATION

### 31 TAC §§58.102, 58.160, 58.166

The Texas Parks and Wildlife Commission (Commission) in a duly noticed meeting on May 21, 2015 adopted amendments to §58.102 and §58.160, and new §58.166, concerning the Statewide Shrimp Fishery Proclamation, without changes to the proposed text as published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2174).

The amendment to §58.102, concerning Definitions, updates a reference to the effective date of federal rules stipulating turtle excluder device (TED) requirements.

The amendment to §58.160, concerning Taking or Attempting to Take Shrimp (Shrimping) - General Rules, corrects an outdated statement in subsection (f) that is no longer accurate. Subsection (f)(1) states that all shrimp boats fishing in Texas outside waters must have an approved TED installed in each trawl that is rigged for fishing. When the rule was promulgated in 2000 (25 TexReg 10157), federal rules required TEDs to be used only in gulf waters. Subsequent federal action required TEDs to be used while shrimping in all coastal waters. The amendment rectifies the inaccuracy.

New §58.166, concerning Special Provision, eliminates count/size requirements for commercial bay shrimping in inside waters. The current rule (31 TAC §58.163(c)(4)(A)), provides that the shrimp size limits for commercial bay shrimpers is a shrimp count of 50 heads-on shrimp per pound of shrimp during part of the Fall season (August 15 through October 31). The new rule eliminates that requirement. There are currently no size limits for the part of the Fall season that runs from November 1 through November 30. The elimination of the count/size requirements during the period from August 15 through October 31, establishes a single count/size limit for the entire Fall season for commercial bay shrimpers.

At the August 2014 meeting of the Commission, members of the shrimping community asked the Commission to investigate the possibility of liberalizing shrimping regulations, requesting a

number of changes. In response, the Parks and Wildlife Department (the department) held a total of seven scoping meetings at points along the Texas coast in order to directly communicate with the shrimping community and listen to their concerns and suggestions. The two most frequently heard suggestions were to extend shrimping hours and increase bag limits in inside waters. Staff concluded that these changes could be implemented without posing risk to the shrimp fishery or bycatch species. The Commission authorized staff to publish proposed amendments to 31 TAC §§58.162 - 58.165 that would extend shrimping hours and increase bag limits in inside waters during the Spring season. The proposed rules were published in the February 20, 2015 issue of the *Texas Register* (40 TexReg 798) and were considered and approved by the Commission at its March 26 commission meeting. The notice of adoption for those rules was published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2573).

Members of the regulated community also made suggestions concerning the Fall season length, gear restrictions, and count sizes (the size of shrimp that legally may be retained). As a result of continuing dialogue with the regulated community, staff has determined that the size/count requirements are unnecessary because shrimp die when they are caught and the result of the current rule is that dead shrimp that are undersized must be thrown overboard to avoid violations. The department reasons that this constitutes an unnecessary and avoidable waste of a resource.

Because the department desires the new section to take effect before the 2015 Fall season opens and the amendments proposed in February could not be adopted and in effect with enough time to propose additional amendments to §58.163, the new section will preempt the count/size requirements of current §58.163(c)(4)(A) until the rules can be harmonized at a later date.

The amendments to §58.102 and §58.160 will function by making department rules consistent with federal rules. New §58.166 will function by eliminating shrimp count requirements for commercial shrimping in inside waters.

The department received five comments opposing adoption of the proposed amendment to §58.102. Of those comments, one articulated a reason or rationale for opposing adoption. The commenter stated that bait shrimpers should be exempted from Turtle Excluder Device (TED) requirements. The department disagrees with the comments and responds that the TED requirements are mandated by federal law. No changes were made as a result of the comment.

The department received 20 comments supporting adoption of the proposed amendment.

The department received six comments opposing adoption of the proposed amendment to §58.160. Of those comments, two provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that shrimpers in inside waters should be exempted from Turtle Excluder Device (TED) requirements. The department disagrees with the comments and responds that the TED requirements are mandated by federal law. No changes were made as a result of the comment.

One commenter stated that TEDS save turtles. The department agrees with the comment. No changes were made as a result of the comment.

The department received 21 comments supporting adoption of the proposed amendment.

The department received 19 comments opposing adoption of proposed new §58.166. Of the 19 comments, three articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that removing the size count restriction will result in damage to the resource because shrimpers will target smaller shrimp for harvest, which will prevent those shrimp from reaching market size. The department disagrees with the comments and responds that the rule is intended to allow the use of a resource that is otherwise going to waste, because undersized shrimp are usually dead and must be thrown overboard in order to comply with the count restriction. No changes were made as a result of the comments.

One commenter opposed adoption and stated that removal of the count restriction will not help bait shrimpers. The department neither agrees nor disagrees with the comment and responds that the rule is intended to allow maximum utilization of a resource that is currently going to waste. No changes were made as a result of the comment.

The department received 80 comments supporting adoption of the proposed new section.

No groups or associations commented on adoption of the proposed rules.

The amendments and new section are adopted under Parks and Wildlife Code, Chapter 77, which provides the Commission with authority to regulate the catching, possession, purchase, and sale of shrimp.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

The Texas Parks and Wildlife Commission (the commission) in a duly noticed meeting on May 21, 2015 adopted amendments to §58.205, concerning Display of License and §58.302, concerning Display of License, without changes to the proposed text as published in the March 13, 2015, issue of the *Texas Register* (40 TexReg 1355).

The amendments clarify that the rules governing the possession of commercial crab fisherman's and finfish fisherman's license plates apply only when a vessel is engaged in an activity for

which the plates or licenses are required and that the plates must match the license aboard the vessel.

Under the provisions of Parks and Wildlife Code, §47.074, the Parks and Wildlife Department (the department) may require the possession of license plates aboard a vessel engaged in an activity for which a commercial finfish fisherman's license is required. Under the provisions of 31 TAC §58.205(a), the commission has mandated the possession of a "display license" (i.e., plate) aboard vessels engaged in the business of a finfish fisherman. Similarly, Parks and Wildlife Code, §78.112(b) authorizes the commission to adopt any rules necessary for the administration of the crab license management program established under Parks and Wildlife Code, Chapter 78, Subchapter B, and the commission has mandated under the provisions of 31 TAC §58.302 that a commercial crab fisherman's license plate be aboard any vessel engaged in an activity for which a commercial crab fisherman's license is required.

The amendments are intended to clarify that when a vessel is being used under a commercial fin fisherman's or crab fisherman's license, the commercial finfish fisherman's and commercial crab fisherman's license plates are required to be in possession aboard the vessel and must match the license aboard the vessel.

The amendments will function by clarifying existing regulations.

The department received one comment opposing adoption of the proposed rules. The commenter stated that plates should not be required because the activities for which plates are required cannot be conducted without a license, which should be sufficient by itself. The department disagrees with the comment and responds that visible plates allow department law enforcement personnel to quickly determine that a vessel is engaged in an activity regulated by the department, which allows for efficient enforcement and enhanced protection of the resource. No changes were made as a result of the comment.

The department received 30 comments supporting adoption of the proposed amendments.

No groups or associations commented on the proposed rules.

## SUBCHAPTER C. STATEWIDE CRAB FISHERY PROCLAMATION

### 31 TAC §58.205

The amendments are adopted under the authority of Parks and Wildlife Code, §47.074(b)(1)(ii), which authorizes the commission to require commercial finfish fisherman's license plates, and §78.112(b), which authorizes the commission to adopt any rules necessary for the administration of the crab license management program established under Chapter 78.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel

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## SUBCHAPTER D. FINFISH FISHERY PROCLAMATION

### 31 TAC §58.302

The amendment is adopted under the authority of Parks and Wildlife Code, §78.112(b), which authorizes the commission to adopt any rules necessary for the administration of the crab license management program established under Parks and Wildlife Code, Chapter 78, Subchapter B.

The adopted rule affects Parks and Wildlife Code, Chapter 78.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 65. WILDLIFE SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION DIVISION 2. OPEN SEASONS AND BAG LIMITS

### 31 TAC §§65.42, 65.44, 65.64

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 26, 2015 adopted amendments to §§65.42, 65.44, and 65.64, concerning the Statewide Hunting Proclamation. Section 65.64 is adopted with changes to the proposed text as published in the February 20, 2015, issue of the *Texas Register* (40 TexReg 799). Section 65.42 and §65.44 are adopted without change and will not be republished.

The change to §65.64, concerning Turkey, corrects a misplaced provision establishing a 14-day fall youth-only season. In the proposed text the provision was inadvertently placed in §65.64(b)(4)(B), which establishes the spring youth-only season. The change moves the provision to §65.64(b)(4)(A), where it properly belongs.

The amendment to §65.42, concerning Deer, designates counties as being in the north or south zones. For many years, the department has informally referred to counties as being in the north or south zones (or North Texas and South Texas). Such designations were also used in the paper version of the summary of the department's hunting and fishing regulations (the *Outdoor Annual*), primarily in the summary of hunting season dates. With the development of the agency's electronic application for the *Outdoor Annual*, the department has continued to use those designations. By reviewing the county listings in §65.42, one could fairly easily determine that the counties listed in §65.42(b)(1), for example, were in the south zone (or South

Texas) and that the remaining counties listed in §65.42(b) were in the north zone (or North Texas). However, these paragraphs were not labeled as such in the regulation. In an effort to ensure that the designations contained the department's *Outdoor Annual* more accurately reflect those contained in the department's regulations, the amendment would officially add those designations.

The amendment to §65.42 also clarifies requirements concerning the use of antlerless mule deer tags during the archery-only open season. The current wording in §65.42(c)(5) states that antlerless permits are not required unless Managed Lands Deer (MLD) permits have been issued for a property, which has been interpreted to apply in all counties where there is an archery-only open season for mule deer; however, in the three counties listed in subsection (c)(5)(B), the harvest of deer during the archery-only open season is specifically established as either-sex. There has been some confusion as to the department's intent, and the amendment clearly sets forth that antlerless harvest during the archery-only season shall be by permit only except in Brewster, Pecos, and Terrell counties.

The amendment to §65.44, concerning Javelina, establishes zone designations for various counties for the same reasons set forth in the discussion of the amendment to §65.42.

The amendment to §65.64, concerning Turkey, establishes zone designations for various counties for the same reasons set forth in the discussion of the proposed amendment to §65.42; closes the season for eastern turkey in 13 counties (Angelina, Brazoria, Camp, Fort Bend, Franklin, Harrison, Hopkins, Matagorda, Morris, Titus, Trinity, Wharton, and Wood) and on National Forest lands in Jasper County; implements a limited season for Rio Grande turkey in Matagorda and Wharton counties; and expands the late youth-only season for Rio Grande turkey to be concurrent with the late youth-only season for white-tailed deer (14 days). Reported harvest of Eastern turkey in the 13 identified counties has fallen below the agency's threshold for keeping the season open. The department therefore intends to close the seasons in those counties while restoration compatibility and restocking efforts take place in the future. Concurrently, the department noted huntable populations of Rio Grande turkey in Matagorda and Wharton counties, and therefore is opening a limited season (one-bird bag limit, gobblers only) to provide hunting opportunity in those counties. The conservative harvest will not affect the sustainability of turkey populations in those counties. The department also reviewed data regarding the harvest of Rio Grande turkey during the current late youth-only seasons and has determined that the youth-only seasons can be expanded to run concurrently with the late youth only deer season, which is intended to reduce regulatory complexity and provide additional hunting opportunity without negatively impacting populations.

The department received two comments opposing adoption of the portion of proposed §65.42 that clarifies permit utilization during the archery-only open season for mule deer. Both commenters offered a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the harvest of doe mule deer should be customized based on population/density and not left to random harvest. The department disagrees with the commenter and responds that the extremely low hunting pressure and hunter success during archery seasons for

mule deer results in population impacts that are insignificant. No changes were made as a result of the comment.

One commenter opposed adoption and stated opposition to complication. The department agrees with the comment and responds that the amendment as adopted clarifies an existing rule without changing its effect. No changes were made as a result of the comment.

The department received 91 comments supporting adoption of the portion of proposed §65.42 that clarifies permit utilization during the archery-only open season for mule deer.

No groups or associations commented on adoption of the proposed amendment.

The department received 12 comments opposing adoption of the portion of proposed §65.64 that closes the season for Eastern turkey in 13 counties. Of the 12 comments, 10 offered a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that instead of closing the season, the department should create a special stamp or fee to hunt Eastern turkey. The department disagrees with the comments and responds that the seasons are being closed because turkey harvest is virtually nonexistent and the department intends to initiate a stocking initiative, during which time hunting would be counterproductive to the establishment of viable populations. No changes were made as a result of the comments.

One commenter opposed adoption and stated that check station data is inaccurate. The department disagrees with the comment and responds that management decisions are not based solely on check station data; the department uses other population and harvest indices as well, and all evidence points to a population status that is tenuous at best. No changes were made as a result of the comment.

One commenter opposed adoption and stated that closing the season on National Forest lands in Jasper County will not increase the number of birds in Jasper County. The department agrees with the comment and responds that the closure is necessary to initiate stocking efforts on National Forest lands. No changes were made as a result of the comment.

One commenter opposed adoption and stated that predators are the problem, along with hunters who do not present harvested turkey at check stations. The department disagrees with the comment and responds that predation is not believed to be a significant component of turkey mortality and that the failure to check harvested birds would have to be occurring on an extremely large scale in order to be the cause of population declines, which is unlikely. No changes were made as a result of the comment.

One commenter opposed adoption and stated that closing the season would not result in population increase, and that there aren't enough check stations. The department disagrees with the comment and responds that the closures are not intended to allow existing turkey populations to rebound, but to allow the department to conduct stocking operations to re-establish populations. The department also responds that the number of check stations is believed to be sufficient. No changes were made as a result of the comment.

One comment opposed adoption and stated that the season should be closed in Polk County as well. The department dis-

agrees with the comment and responds that turkey harvest in Polk County does not meet the department parametric for season closure. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that turkey populations are thriving in isolated pockets of suitable habitat and that season should remain open in such places. The department disagrees with the comments and responds that although there are limited areas where turkey may be flourishing, the overall picture at landscape scale indicates that closure is necessary; however, the presence of such populations is believed to be favorable to a more timely restoration of hunting opportunity following restocking efforts. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there is no Eastern turkey habitat in Morris County. The department disagrees with the comment and responds that although limited, there are portions of Morris County with suitable habitat to support Eastern turkey populations. No changes were made as a result of the comment.

The department received 93 comments supporting adoption of the portion of proposed §65.64 that closes the season for Eastern turkey in 13 counties.

No groups or associations commented on adoption of the proposed amendment.

The department received four comments opposing adoption of the portion of proposed §65.64 that opens a season for Rio Grande turkey in two counties. Of the four comments, one articulated a reason or rationale for opposing adoption. The commenter stated that Wharton County should be closed in order to let the population increase. The department disagrees with the comment and responds that a spring harvest limited to one tom is extremely conservative and should have no impact on turkey reproduction. No changes were made as a result of the comment.

The department received 98 comments supporting adoption of the portion of proposed §65.64 that opens a season for Rio Grande turkey in two counties.

No groups or associations commented on adoption of the proposed amendment.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for animals during each year or season; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§65.64. *Turkey.*

(a) The annual bag limit for Rio Grande and Eastern turkey, in the aggregate, is four, no more than one of which may be an Eastern turkey.

(b) Rio Grande Turkey. The open seasons and bag limits for Rio Grande turkey shall be as follows.

(1) Fall seasons and bag limits:

(A) The counties listed in this subparagraph are in the Fall South Zone. In Aransas, Atascosa, Bee, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kinney (south of U.S. Highway 90), LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (in that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Zapata, and Zavala counties, there is a fall general open season.

(i) Open season: first Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) In Brooks, Kenedy, Kleberg, and Willacy counties, there is a fall general open season.

(i) Open season: first Saturday in November through the last Sunday in February.

(ii) Bag limit: four turkeys, either sex.

(C) The counties listed in this subparagraph are in the Fall North Zone. In Archer, Armstrong, Bandera, Baylor, Bell, Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Karnes, Kendall, Kent, Kerr, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lipscomb, Lampasas, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Medina (north of U.S. Highway 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, Sutton, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde (north of U.S. Highway 90), Ward, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Wise, Val Verde (that portion located north of U.S. Highway 90; and that portion located both south of U.S. Highway 90 and west of Spur 239), and Young counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(2) Archery-only season and bag limits. In all counties where there is a general fall season for turkey there is an open season during which turkey may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(B) Bag limit: in any given county, the annual bag limit is as provided by this section for the fall general season in that county.

(3) Spring season and bag limits.

(A) The counties listed in this subparagraph are in the Spring North Zone. In Archer, Armstrong, Baylor, Bell, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Ellis, Erath, Fisher, Floyd, Foard, Garza, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Kent, King, Knox,

Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Potter, Randall, Reagan, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Throckmorton, Tom Green, Travis, Upton, Ward, Wheeler, Wichita, Wilbarger, Williamson, Wise, and Young counties, there is a spring general open season.

(i) Open season: Saturday closest to April 1 for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) The counties listed in this subparagraph are in the Spring South Zone. In Aransas, Atascosa, Bandera, Bee, Bexar, Blanco, Brewster, Brooks, Calhoun, Cameron, Comal, Crockett, DeWitt, Dimmit, Duval, Edwards, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Hidalgo, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Pecos, Real, Refugio, San Patricio, Starr, Sutton, Terrell, Uvalde, Val Verde, Victoria, Webb, Willacy, Wilson, Zapata, and Zavala counties, there is a spring general open season.

(i) Open season: Saturday closest to March 18 for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(C) In Bastrop, Caldwell, Colorado, Fayette, Jackson, Lavaca, Lee, Matagorda, Milam, and Wharton counties, there is a spring general open season.

(i) Open season: from April 1 through April 30.

(ii) Bag limit: one turkey, gobblers only.

(4) Special Youth-Only Seasons. Only licensed hunters 16 years of age or younger may hunt during the seasons established by this subsection.

(A) There shall be a special youth-only fall general hunting season in all counties where there is a fall general open season.

(i) open season: the weekend (Saturday and Sunday) immediately preceding the first Saturday in November and from the Monday immediately following the close of the general open season for 14 consecutive days.

(ii) bag limit: as specified for individual counties in paragraph (1) of this subsection.

(B) There shall be special youth-only spring general open hunting seasons for Rio Grande turkey in the counties listed in paragraph (3)(A) and (B) of this subsection.

(i) open seasons:

(I) the weekend (Saturday and Sunday) immediately preceding the first day of the general open spring season; and

(II) from the Saturday immediately following the close of the general open spring season for 14 consecutive days.

(ii) bag limit: as specified for individual counties in paragraph (3) of this subsection.

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Bowie, Cass, Fannin, Grayson, Jasper (other than National Forest lands), Lamar, Marion, Nacogdoches, New-

ton, Panola, Polk, Red River, Sabine, San Augustine, and Upshur counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.

(1) Open season: from April 15 through May 14.

(2) Bag limit (both species combined): one turkey, gobbler only.

(3) In the counties listed in this subsection:

(A) it is unlawful to hunt turkey by any means other than a shotgun, lawful archery equipment, or crossbows;

(B) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area; and

(C) all turkeys harvested during the open season must be registered via the department's internet or mobile application or at a designated check station within 24 hours of the time of kill. The department will publish the internet address and information on obtaining the mobile application in generally accessible locations, including the department internet web site ([www.tpwd.texas.gov](http://www.tpwd.texas.gov)). Harvested turkeys may be field dressed but must otherwise remain intact.

(d) In all counties not listed in subsection (b) or (c) of this section, the season is closed for hunting turkey.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 3, 2015.

TRD-201502538

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2015

Proposal publication date: February 20, 2015

For further information, please call: (512) 389-4775



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER A. GENERAL RULES

###### 34 TAC §3.13

The Comptroller of Public Accounts adopts new §3.13, relating to postmarks, timely filing of reports, and timely payment of taxes and fees, with changes to the proposed text as published in the January 2, 2015, issue of the *Texas Register* (40 TexReg 18). This new section explains and memorializes comptroller policy on determining whether a report or payment submitted by mail is timely remitted. This section does not apply to taxpayers required by statute or another section of this title to remit funds electronically. Taxpayers required to remit funds electronically should refer to §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers) and Chapter 15 of this title (relating to Electronic Transfer of Certain Payments to State Agencies) for additional guidance related to remitting electronic payments timely.

Subsection (a) defines "common carrier" and "contract carrier" with the same meaning assigned in §3.297 of this title (relating to Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles).

Comments received from the State Bar of Texas Tax Section suggested the addition of definitions for the terms "United States Postal Service postmark" and "receipt mark," as used in subsection (c). In order to provide additional guidance to taxpayers and make clear the applicability of this section, definitions of "United States Postal Service postmark" and "receipt mark" have been added to subsection (a) based on the common understanding of these terms, drawn from *The American Heritage Dictionary of the English Language*, Fifth Edition, 2011. In addition, a statement has been added to describe recorded dates which do not qualify as postmarks.

Subsection (b) sets out the general provisions applicable to timely filing reports and timely submitting payments and serves to provide context for the provisions in subsection (c). Paragraphs (1) and (2) implement and are drawn from Tax Code, §111.0081 (When Payment is Required) and §111.051 (Reports and Payments; Due Dates; Method of Payment). Paragraph (3) implements and is drawn from Tax Code, §111.053 (Filing Dates: Weekends and Holidays). Paragraph (4) explains that a report or payment postmarked or receipt-marked on or before the applicable due date is considered timely filed.

Subsection (c) provides additional guidance on timely filing of reports and timely submission of payments. Paragraph (1) implements Tax Code, §111.054 (Timely Filing: Mail Delivery) and explains that a postmark or receipt mark will serve as prima facie evidence of the date of filing a report or submitting a payment, as long as the postmarked or receipt-marked envelope or documentation reflects a valid comptroller's address. Paragraph (2) explains the comptroller's policy for determining whether a report or payment received without a postmark or receipt mark is timely filed or submitted. Paragraph (3) implements and is drawn from Tax Code, §111.055 (Timely Filing: Diligence).

The State Bar of Texas Tax Section also submitted comments which recommended revising the phrase "the comptroller's correct address" in subsection (c)(1) to "a valid comptroller's address" to clarify that taxpayers are permitted to use addresses provided in relevant tax forms, instructions, and correspondence received from the agency. The agency agrees that the proposed alternative language would be clearer and has incorporated this change.

Finally, the State Bar of Texas Tax Section submitted comments recommending revisions to subsection (c)(2), regarding presumptions related to filings received without postmarks or receipt marks. The agency agrees with the suggested revisions, drawn from the mailbox rule embodied in §1.32 of this title (relating to Service) and has incorporated them accordingly.

The new section is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of provisions of Tax Code, Title 2, and taxes, fees, or other charges or refunds which the comptroller administers under other law.

The new section implements Tax Code, §§111.0081 (When Payment is Required), 111.051 (Reports and Payments; Due Dates; Method of Payment), 111.053 (Filing Dates: Weekends and Holidays), 111.054 (Timely Filing: Mail Delivery), and 111.055 (Timely Filing: Diligence).

*§3.13. Postmarks, Timely Filing of Reports, and Timely Payment of Taxes and Fees.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Common carrier--A person who provides transportation of persons or property to members of the general public for compensation in the normal course of business.

(2) Contract carrier--A person who provides to industrial customers, pursuant to the terms of a bilateral agreement, the transportation of persons or property for compensation in the normal course of business.

(3) Receipt mark--An official mark printed by a common carrier or contract carrier recording the date and place of mailing.

(4) United States Postal Service postmark--An official mark printed over a postage stamp by the United States Postal Service, canceling the stamp and recording the date and place of mailing. A postmark does not include dates recorded on postage purchased over the Internet, pre-metered stamps, or postage from postage meters unless an actual postmark is generated.

(b) General provisions.

(1) All reports required to be submitted to the comptroller shall be filed on or before the due date for filing the report.

(2) All payments required to be remitted to the comptroller shall be paid on or before the due date for making such payments.

(3) If a due date falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.

(4) If a report or payment is postmarked or receipt-marked on or before the applicable due date, it will be considered timely filed.

(c) Timely filing or payment - postmark or receipt mark.

(1) To determine whether a report has been timely filed or a payment timely made, the date of a United States Postal Service postmark or a receipt mark showing when a report or payment was delivered to a common carrier or contract carrier will be prima facie evidence of the date the filing or payment was made, so long as the envelope, or common carrier or contract carrier documentation, reflects a valid comptroller's address.

(2) If a report or payment is received through the United States Postal Service and does not have a postmark, or is received through a common carrier or contract carrier and does not have a receipt mark, the date of the filing of the report or payment is presumed, in the absence of evidence supporting the assertion of a different filing date, to be:

(A) if received through the United States Postal Service, three days prior to the date on which the report or payment is physically received by the comptroller, as evidenced by comptroller records; or

(B) if received through a common carrier or contract carrier, one day prior to the date on which the report or payment is physically received by the comptroller, as evidenced by comptroller records.

(3) If a taxpayer penalized for late filing or late payment can demonstrate that he or she exercised reasonable diligence to comply with the requirements of timely filing and timely paying but, through no fault of the taxpayer, the report or payment arrived after the due date, the report or payment will be considered timely.

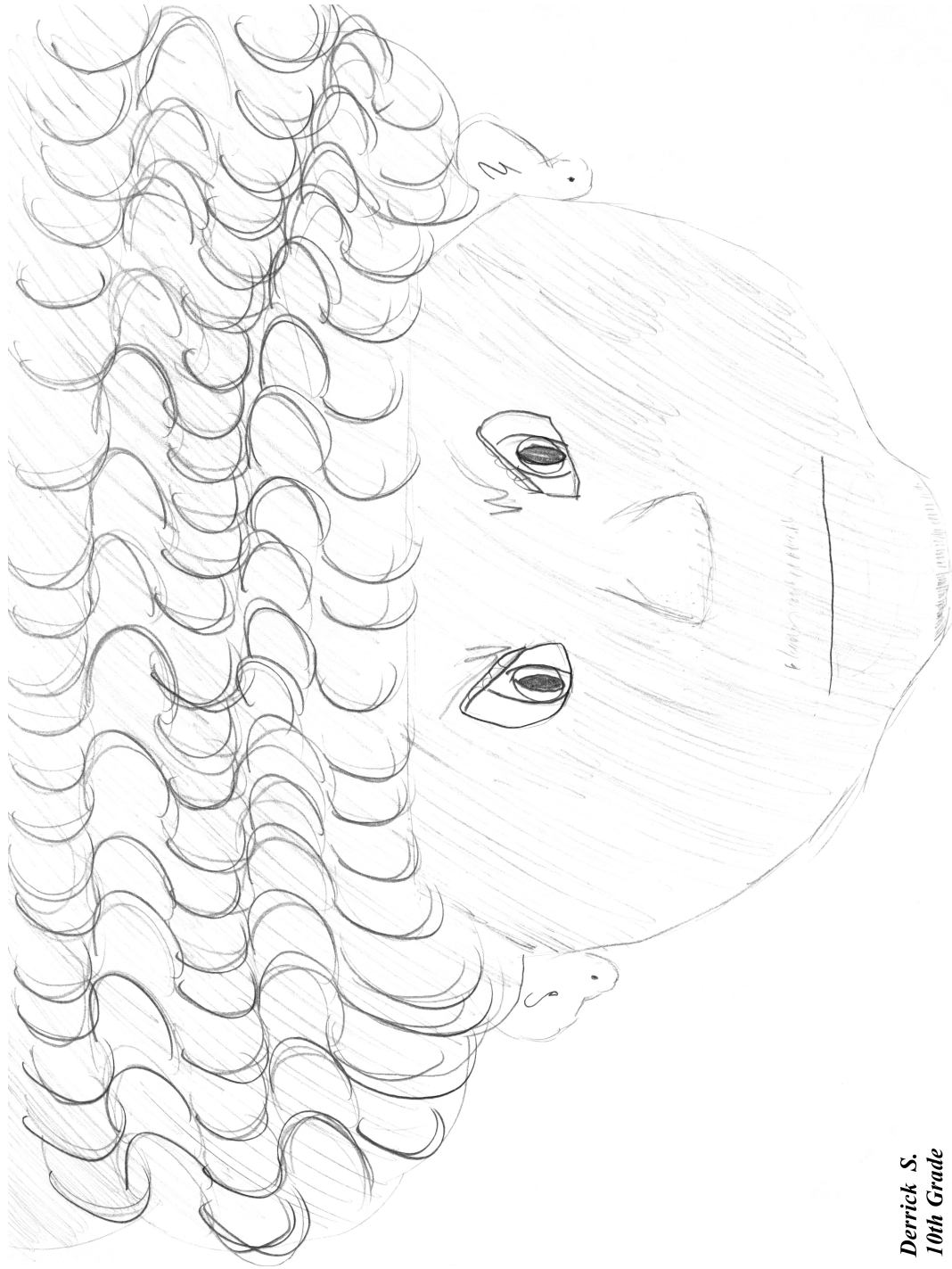


The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 2015.  
TRD-201502465

Lita Gonzalez  
General Counsel  
Comptroller of Public Accounts  
Effective date: July 20, 2015  
Proposal publication date: January 2, 2015  
For further information, please call: (512) 475-0387





**Derrick S.  
10th Grade**

# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

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## Proposed Rule Reviews

Office of Consumer Credit Commissioner

### Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 5, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions. Chapter 90 contains Subchapter A, concerning General Provisions; Subchapter B, concerning Secured Consumer Installment Loans (Chapter 342, Subchapter E); Subchapter C, concerning Signature Loans (Chapter 342, Subchapter F); Subchapter D, concerning Second Lien Home Equity Loans (Chapter 342, Subchapter G); Subchapter E, concerning Second Lien Purchase Money Loans (Chapter 342, Subchapter G); Subchapter F, concerning Second Lien Home Improvement Contracts (Chapter 342, Subchapter G); and Subchapter G, concerning Spanish Disclosures.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments for 31 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to [laurie.hobbs@occc.texas.gov](mailto:laurie.hobbs@occc.texas.gov). Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201502623

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 8, 2015

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## Adopted Rule Reviews

Texas Board of Chiropractic Examiners

### Title 22, Part 3

The Texas Board of Chiropractic Examiners (Board) has completed its review required by the Texas Government Code §2001.039 of the following chapters of Title 22, Part 3 of the Texas Administrative Code:

Chapter 71 - Rulemaking

Chapter 72 - Applications and Applicants

The reviewed sections in these chapters are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the April 10, 2015, issue of the *Texas Register* (40 TexReg 2101). As provided in this notice, the Board reviewed and considered the sections for readoption, revision, or repeal.

The Board considered whether the reasons for adoption of the sections continue to exist. The Board received no written comments regarding the review of the sections.

The Board has determined that the reasons for adopting the sections continue to exist and the sections are retained. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act.

This concludes and completes the Board's review of Chapter 71 and 72. The chapters will be reviewed again in the future in accordance with Government Code §2001.039.

TRD-201502493

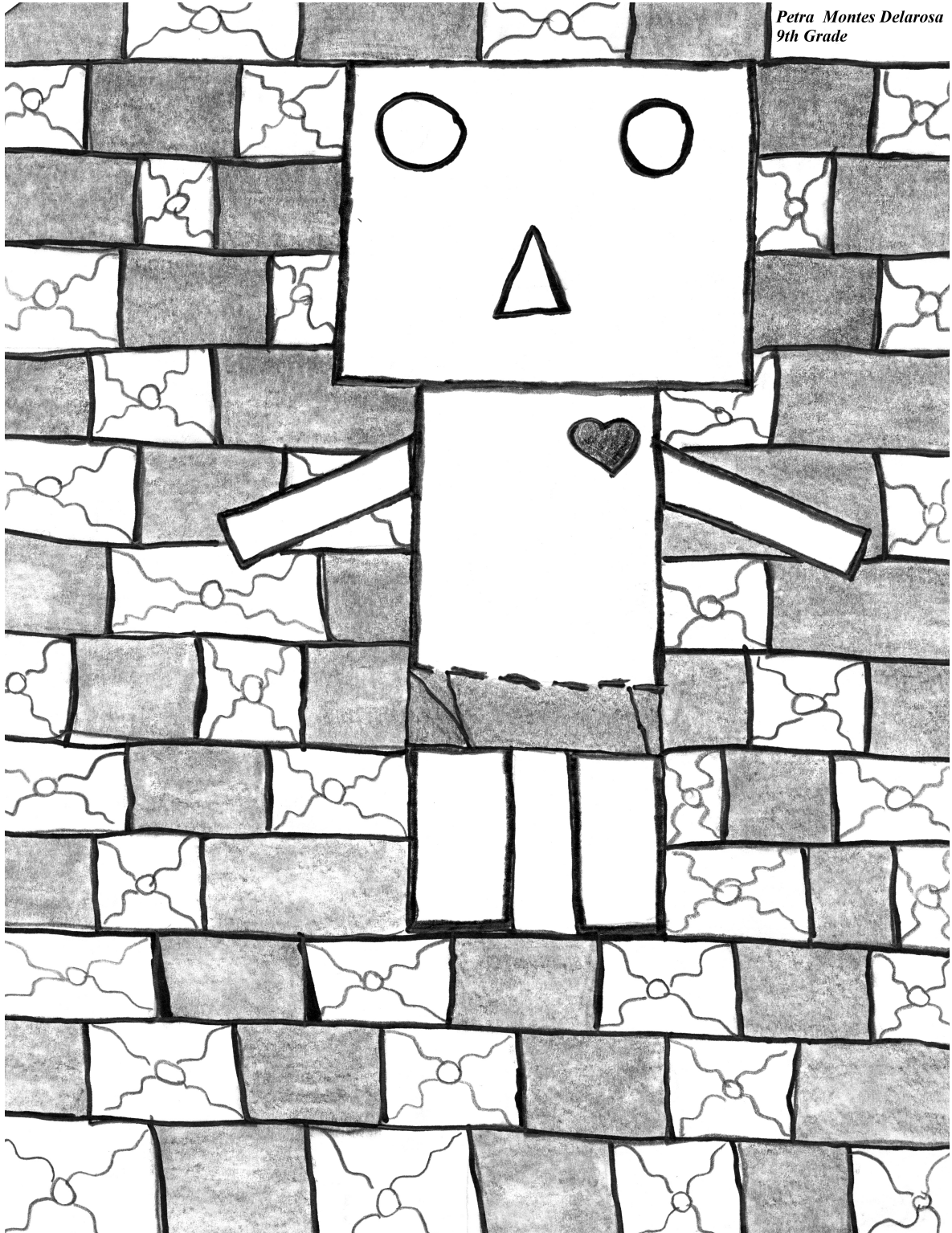
Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Filed: July 2, 2015

Petra Montes Delarosa  
9th Grade



# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 22 TAC §7.10(b)(2)

Description	Architects	Landscape Architects	Registered Interior Designers	Total Fee Using Credit Card Payment	Total Fee Using ACH
Exam Application	\$100	\$100	\$100	\$102.51	\$101
Examination	***	**	*		
Registration by Examination--Resident	\$155	\$155	\$155	\$158.74	\$156
Registration by Examination--Nonresident	\$180	\$180	\$180	\$184.31	\$181
Reciprocal Application	\$150	\$150	\$150	\$153.63	\$151
Reciprocal Registration	\$200	\$200	\$200	\$204.76	\$201
Active Renewal--Resident	\$105	\$105	\$105	\$107.62	\$106
Active Renewal--Nonresident	\$200	\$200	\$200	\$204.76	\$201
Active Renewal 1-90 days late--Resident	\$157.50	\$157.50	\$157.50	\$161.30	\$158.50
Active Renewal > than 90 days late--Resident	\$210	\$210	\$210	\$214.98	\$211
Active Renewal 1-90 days late--Nonresident	\$300	\$300	\$300	\$307.01	\$301
Active Renewal > than 90 days late--Nonresident	\$400	\$400	\$400	\$409.26	\$401
Emeritus Renewal--Resident	\$10	\$10	\$10	\$10.48	\$11
Emeritus Renewal--Nonresident	\$10	\$10	\$10	\$10.48	\$11
Emeritus Renewal 1-90 days late--Resident	\$15	\$15	\$15	\$15.59	\$16
Emeritus Renewal > than 90 days late--Resident	\$20	\$20	\$20	\$20.71	\$21
Emeritus Renewal 1-90 days late--Nonresident	\$15	\$15	\$15	\$15.59	\$16
Emeritus Renewal > than 90 days late--Nonresident	\$20	\$20	\$20	\$20.71	\$21
Inactive Renewal--Resident	\$25	\$25	\$25	\$25.82	\$26
Inactive Renewal--Nonresident	\$125	\$125	\$125	\$128.07	\$126
Inactive Renewal 1-90 days late--Resident	\$37.50	\$37.50	\$37.50	\$38.60	\$38.50
Inactive Renewal > than 90 days late--Resident	\$50	\$50	\$50	\$51.38	\$51
Inactive Renewal 1-90 days late--Nonresident	\$187.50	\$187.50	\$187.50	\$191.97	\$188.50
Inactive Renewal > than 90 days late--Nonresident	\$250	\$250	\$250	\$255.88	\$251

Reciprocal Reinstatement	\$610	\$610	\$610	\$623.98	\$611
Change in Status--Resident	\$65	\$65	\$65	\$66.72	\$66
Change in Status--Nonresident	\$95	\$95	\$95	\$97.39	\$96
Reinstatement--Resident	\$685	\$685	\$685	\$700.67	\$686
Reinstatement--Nonresident	\$775	\$775	\$775	\$792.69	\$776
Certificate of Standing--Resident	\$30	\$30	\$30	\$30.93	\$31
Certificate of Standing--Nonresident	\$40	\$40	\$40	\$41.16	\$41
Replacement or Duplicate Wall Certificate--Resident	\$40	\$40	\$40	\$41.16	\$41
Replacement of Duplicate Wall Certificate--Nonresident	\$90	\$90	\$90	\$92.28	\$91
Duplicate Pocket Card	\$5	\$5	\$5	\$5.37	\$6
Reopen Fee for closed candidate files	\$25	\$25	\$25	\$25.82	\$26
Annual Business Registration Fee****	\$45	\$45	\$45	\$46.27	\$46
Business Registration Renewal 1-90 days late****	\$67.50	\$67.50	\$67.50	\$69.27	\$68.50
Business Registration Renewal >than 90 days late****	\$90	\$90	\$90	\$92.28	\$91
Examination--Record Maintenance	\$25	\$25	\$25	\$25.82	\$26
Returned Check Fee	\$25	\$25	\$25	\$25.82	\$26

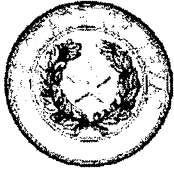
\*Examination fees are set by the Board examination provider, the National Council for Interior Design Qualification ("NCIDQ"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination is to be given.

\*\*Examination fees are set by the Board's examination provider, the Council of Landscape Architectural Registration Boards ("CLARB"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination is to be given.

\*\*\*Examination fees are set by the Board's examination provider, the National Council of Architectural Registration Boards ("NCARB"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination will be given.

\*\*\*\*Notwithstanding the amounts shown in each column, a multidisciplinary firm which renders or offers two or more of the regulated professions of architecture, landscape architecture, and interior design is required to pay only a single fee in the same manner as a firm which offers or renders services within a single profession.

Figure: 22 TAC §78.8(a)



<p><b>TEXAS BOARD OF CHIROPRACTIC EXAMINERS</b>  <b>Enforcement Division</b>  <b>COMPLAINT FORM</b></p>	
<p>333 Guadalupe, Ste 3-825                  Austin, TX 78701</p>	<p>(512) 305-6700 phone                  (512) 305-6705 fax</p>

Notice: Except for the name of the chiropractor or facility, all information requested is voluntary, but failure to provide the requested information may delay or prevent the investigation of your complaint. As much information as possible should be provided in connection with the complaint. The information on this form will be used in part to determine whether a violation of the Chiropractic Act or Board rules has occurred.

<b>PERSON MAKING COMPLAINT</b>	FULL NAME	HOME PHONE
	BUSINESS NAME (IF APPLICABLE)	WORK PHONE
	STREET ADDRESS	FAX NUMBER
	CITY STATE ZIP	EMAIL

<b>CHIROPRACTOR OR FACILITY COMPLAINT IS ABOUT</b>	FULL NAME (CHIROPRACTOR OR OWNER OF FACILITY)	LICENSE NUMBER (IF KNOWN)
	FACILITY NAME	WORK PHONE
	STREET ADDRESS	
	CITY STATE ZIP	

<b>NATURE OF COMPLAINT (check all that apply)</b>	<input type="checkbox"/> Quality of Care <input type="checkbox"/> Insurance Fraud <input type="checkbox"/> Excessive Treatment or Charges <input type="checkbox"/> Unprofessional Conduct <input type="checkbox"/> Misdiagnosis <input type="checkbox"/> Poor Record Keeping <input type="checkbox"/> Solicitation of Patients <input type="checkbox"/> Unsanitary Conditions	<input type="checkbox"/> Records Release <input type="checkbox"/> Substance Abuse <input type="checkbox"/> Billing for Services not Rendered <input type="checkbox"/> Sexual Misconduct <input type="checkbox"/> Impairment/Medical Condition <input type="checkbox"/> Advertising <input type="checkbox"/> Billing Practices <input type="checkbox"/> Unlicensed Practice	<input type="checkbox"/> Practicing Beyond Scope <input type="checkbox"/> Unsure <input type="checkbox"/> Other _____ _____ _____ _____
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<b>WITNESS INFORMATION</b>	WITNESS, IF ANY	WITNESS, IF ANY	
	WITNESS NAME PHONE NO.	WITNESS NAME PHONE NO.	
	ADDRESS	ADDRESS	
	CITY ST ZIP	CITY ST ZIP	
If needed, is this witness willing to support your complaint by testifying at a hearing? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN		If needed, is this witness willing to support your complaint by testifying at a hearing? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN	



<b>ADDITIONAL INFORMATION</b>	<b>IF AN ATTORNEY IS INVOLVED, COMPLETE THIS SECTION</b>	<b>IF SECOND OPINION RECEIVED, COMPLETE THIS SECTION</b>
	ATTORNEY NAME _____ PHONE NO. _____	PRACTITIONER NAME _____ PHONE NO. _____
	ADDRESS _____	ADDRESS _____
	CITY _____ ST _____ ZIP _____	CITY _____ ST _____ ZIP _____
	<b>HAVE YOU CONTACTED THE CHIROPRACTOR OR FACILITY CONCERNING YOUR COMPLAINT?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	<b>HAVE YOU COMPLAINED TO ANY OTHER ORGANIZATION?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO
	WHEN: _____ HOW: <input type="checkbox"/> Telephone <input type="checkbox"/> Letter <input type="checkbox"/> Other (please specify) _____	WHO: _____ WHEN: _____ HOW: <input type="checkbox"/> Telephone <input type="checkbox"/> Letter <input type="checkbox"/> Other (please specify) _____
<b>DID CHIROPRACTOR OR FACILITY RESPOND?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	<b>DID ORGANIZATION RESPOND?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	
Action taken _____	Action taken _____	

<b>DETAILS OF COMPLAINT</b>	<b>STATE YOUR COMPLAINT</b>	PLEASE WRITE LEGIBLY USE A SEPARATE COMPLAINT FORM FOR EACH INDIVIDUAL PRACTITIONER. PROVIDE CLEAR AND CONCISE INFORMATION SUCH AS: THE SEQUENCE OF EVENTS SURROUNDING YOUR COMPLAINT, DATES OF TREATMENTS OR INCIDENTS, AND COPIES (DOCUMENTS WILL NOT BE RETURNED) OF ALL RELEVANT DOCUMENTS REGARDING YOUR COMPLAINT (LETTERS, CORRESPONDENCE, WITNESS STATEMENTS, CONTRACTS, POLICE REPORTS, BILLS, OR PHOTOGRAPHS). IF MORE SPACE IS NEEDED, PLEASE USE ADDITIONAL PAPER.

Lined area for writing the complaint details.

**PLEASE RETURN TO:**  
Texas Board of Chiropractic  
Examiners  
333 Guadalupe, Ste 3-825  
Austin, TX 78701  
(512) 305-6705 fax

**I ATTEST THAT ALL STATEMENTS MADE BY ME IN RELATION TO THIS COMPLAINT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.**  
**I ACKNOWLEDGE THAT THE TEXAS BOARD OF CHIROPRACTIC EXAMINERS MAY PROVIDE A COPY OF THIS FORM TO THE PERSON AGAINST WHOM THE COMPLAINT IS MADE.**  
**I AGREE TO TESTIFY IN ANY HEARINGS THAT MAY ARISE AS A RESULT OF THIS COMPLAINT.**  
**I UNDERSTAND THAT THE TEXAS BOARD OF CHIROPRACTIC EXAMINERS DOES NOT REPRESENT CITIZENS SEEKING THE RETURN OF THEIR MONEY OR OTHER PERSONAL REMEDIES OR HAVE JURISDICTION OVER BUSINESS/INSURANCE MATTERS.**

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

Please sign the release below. Failure to sign the release may result in a delay of the investigation of your complaint.

**RELEASE OF INFORMATION AUTHORIZATION**

I hereby authorize any person, including, but not limited to, hospitals, institutions, health care providers, clinics, employers (past and present), laboratories, attorneys, insurance companies, government agencies, or other public or private agencies to release to the Texas Board of Chiropractic Examiners, its representatives, agents or employees any and all information about me, including documents, reports, records, files, testimony or any other documents regardless of form or content.

PATIENT NAME: \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_\_

SIGNATURE OF PATIENT (Parent or, legal guardian, if applicable):

\_\_\_\_\_ DATE: \_\_\_\_\_

If filled out by someone other than complainant, please provide the name and contact information of the person (s) who assisted in filling out this form. Name/Contact information \_\_\_\_\_

Figure: 22 TAC §190.14(9)

Violation Description	Statutory/Rule Citation	Low Sanction	High Sanction
Abusive or Disruptive Behavior	§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(K), (P)	Remedial Plan: Anger management and communications CME, JP exam, medical ethics	Agreed Order with IME or Public Referral to PHP; CME in medical ethics, anger management, communications with colleagues, JP exam. For multiple orders or egregious actions--interfering with patient care: public reprimand, suspension with terms and conditions
Aiding in unlicensed practice	§164.052(a)(17) (directly or indirectly aids or abets unlicensed practice)	Remedial Plan: Directed CME in supervision or delegation if applicable; 8 hours CME in medical ethics, 8 hours CME in risk management; must pass JP within 1 year	Agreed Order: Public reprimand, all sanctions in low category, plus \$2,000 admin penalty
Bad faith mediation by a licensee in relation to an out-of-network health benefit claim	§1467.101 and 1467.102 of the Texas Insurance Code (bad faith in out-of-network claim dispute resolution)--"except for good cause shown, the regulatory agency shall impose an administrative penalty"	Good cause shown: Remedial Plan: 8 hours of medical ethics; otherwise, admin penalty is statutorily required	Agreed Order: Public reprimand; \$5,000 admin penalty, "except for good cause shown" per §1467.102; plus all sanctions in low category
Boundary Violation: Engaging in sexual contact with a patient or engaging in sexually inappropriate behavior or comments directed towards a patient	§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(E)-(F)	<b>RP is statutorily prohibited</b> Verbal remarks, or inappropriate behavior, but not involving touching: Agreed Order: Public reprimand; Vanderbilt or PACE boundaries course; JP exam; CME in ethics; chaperone	Cases involving physical contact: Agreed Order: Low sanctions plus IME, Replace chaperone with may not treat patient of the affected gender; or suspension or revocation
Boundary Violation: Becoming financially or personally involved with a patient in an inappropriate manner	§164.052(a)(5)(unprofessional conduct likely to injure public); Rule §190.8(2)(G)	<b>RP is statutorily prohibited</b> Single incident: Agreed Order: CME in ethics, JP exam; if financial involvement, restitution if appropriate; and/or admin penalty	More than one incident (more than one patient, or occasion): Agreed Order: Low Sanctions plus: Public reprimand; Vanderbilt or PACE boundaries course; JP exam; CME in ethics; administrative

			penalty; or suspension or revocation
Breach of Confidentiality	§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(N)	Remedial Plan: 8 hours risk management CME to include HIPAA, \$500 administration fee	Agreed Order: Public reprimand, CME in risk management and in HIPAA requirements; \$3,000 per occurrence; JP exam
Cease and desist order--issuance of. See "Unlicensed practice of medicine"	§164.002 (Board's general authority to dispose of "any complaint or matter" unless precluded by another statute) §165.052 (power to issue cease and desist orders against unlicensed persons)		
Cease and desist order (existing), violation of	§165.052(b) (violation of (c) and (d) is grounds for imposing admin penalty)	Administrative penalty \$2,000 - \$5,000 per offense	Referral to Attorney General for civil penalty and costs or criminal prosecution. §165.101 (civil) and §165.152 (criminal)
Change in practice or mailing address, failure to notify the board of	§164.051(a)(3) Rule §166.1(d) (notify Board within 30 days of change of mailing or practice address or professional name on file)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management; \$2,000 admin penalty; JP exam
CME - Failure to obtain or document CME	§164.051(a)(3) (forbids breaking or attempting to break a Board rule); Rule §166.2 (48 credits each 24 months + other requirements and accreditation of CME req'ts)	Remedial Plan: All missing hours of CME and 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of CME in ethics/risk management plus complete all missing hours; \$1,000 admin penalty; JP exam
Crime: Abortion - performing a criminal abortion. Health and Safety Code §170.002 and Chapter 171 (§170.002 prohibits third-trimester abortions, with exceptions; Chapter 171 requires physicians to make available certain materials to abortion patients and restricts how informed consent is obtained; the criminal offense (§171.018) is an unspecified class of misdemeanor	§164.052(a)(16) (prohibits performing, procuring, aiding, or abetting in procuring a criminal abortion); §164.055 (requires "appropriate disciplinary action" against a physician who violates Health and Safety Code §170.002 or Chapter 171)	Agreed Order: Public Reprimand; must pass JP within 1 year; \$5,000 admin penalty	Agreed Order: Suspension, probated with terms, or revocation

punishable only by a \$10,000 fine)			
Crime: Arrest for offense under Penal Code §§21.02; 21.11; 22.011(a)(2); 22.021(a)(1)(B); (assaultive offenses against children)	§164.0595 (Temporary suspension or restriction of license for certain arrests)	Agreed Order: Restriction of license, chaperone; may not treat pediatric patients	Agreed Order: Suspension of license, no probation
Crime: Deferred adjudication community supervision for offense under Penal Code §§21.11; 22.011(a)(2); 22.021(a)(1)(B); (assaultive offenses against children)	§164.057(c) (mandates revocation upon proof of deferred adjudication community supervision)		Revocation is statutorily required
Crime: Felony conviction	§204.303(a)(2) of the Physician Assistant Act; §205.351(a)(7) of the Acupuncture Act; §164.057(a)(1)(A) of the Medical Practice Act (requires suspension on initial conviction for a felony)	Initial conviction: Statutorily required §190.8(6)(A)(iv) and §164.057(a)(1)(A); suspension to occur by operation of law pursuant to §187.72	Revocation is statutorily required on final conviction - §164.057(b)
Crime: Felony deferred adjudication; Misdemeanor involving moral turpitude deferred adjudication	§204.303(a)(2) & (3) of the Physician Assistant Act; Board Rule 185.17(7)&(11); §205.351(a)(7) of the Acupuncture Act; §164.051(a)(2)(A) of the Medical Practice Act (authorizes sanctions for initial convictions and deferred adjudications for felonies and misdemeanors involving moral turpitude)	Agreed Order: Appropriate sanction such as referral to PHP, anger management, IME, restrictions on practice, CME in appropriate area	Suspension or Revocation; §164.001(a); Revocation is statutorily required on final conviction of a felony- §164.057(b)
Crime: Misdemeanor conviction of crime involving moral turpitude	§204.303(a)(2) of the Physician Assistant Act; §205.351(a)(7) of the Acupuncture Act; §164.051(a)(2)(B) of the Medical Practice Act (authorizes suspension on initial conviction for misdemeanor of moral turpitude, and revocation upon final conviction)	If the offense is not related to the duties and responsibilities of the licensed occupation, the standard sanction shall require: (-a-) Suspension of license, which may be probated; (-b-) compliance with all restrictions, conditions and terms imposed by any order of probation or deferred adjudication; (-c-) public reprimand;	If the offense is related to the duties and responsibilities of the licensed occupation, the standard sanction shall be revocation of the license.

		and (-d-) administrative penalty of \$2,000 per violation.	
Crime: Misdemeanor conviction <b>not</b> involving moral turpitude that is connected with the physician's practice of medicine	Texas Occupations Code §53.021; Rule §190.8(6)(B)(iv) stating Chapter 53 of applies to misdemeanor convictions not involving moral turpitude but connected with the physicians practice of medicine and setting out factors showing connection to practice of medicine	Suspension	Revocation
Crime: Misdemeanor deferred adjudication or conviction not involving moral turpitude that is <b>not</b> connected with physician's practice of medicine and not an offense under Chapter 22 or 25 of the Penal Code	§164.052(a)(5), as defined by Rule §190.8(2)(R)(iv), (vi), (vii), (ix), (x), (xi), and (xii) (authorizes sanctions based upon unprofessional conduct that would include commission of violations of federal and state law, whether or not there is a complaint, indictment, or conviction)	Agreed Order: Appropriate sanction such as referral to PHP, anger management, IME, restrictions on practice, CME	Suspension with terms and conditions <b>OR</b> Revocation for repeat or egregious offenses
Crime: Misdemeanor initial conviction under Penal Code Chapter 22 (assaultive offenses - <b>see also: arrest or deferred adjudication for assaultive offenses against children</b> ) of crime punishable by more than a fine; <b>OR</b> Penal Code §25.07 (violation of court order re: family violence); <b>OR</b> §25.071 (violation of court order re: crime of bias or prejudice); <b>OR</b> one requiring registration as a sex offender under Code of Criminal Procedures Chapter 62	§164.057(a)(1)(B), (C), (D), and (E) (when misdemeanor conviction requires suspension)	Suspension is statutorily required per §164.057(a)(1)(B)	Revocation is statutorily required on final conviction - §164.057(b)
Death certificate,	§164.053(a)(1) (authorizes	Remedial Plan: 4	Agreed Order: CME –

failure to sign electronically	sanctions via §164.052(a)(5) for breaking any law that "is connected with the physician's practice of medicine"); Health and Safety Code Chapter 193 (requires electronic filing of death certificates)	hours of ethics/risk management and \$500 administration fee	8 hours of risk management, 4 - 8 hours medical ethics; \$2,000 admin penalty; JP exam
Delegation of professional medical responsibility or acts to person if the physician knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts	§164.053(a)(9) (describes the violation as unprofessional conduct, allows sanctions)	Remedial Plan: 12 hours CME in supervision and delegation, 8 hours in risk management, 8 hours in medical ethics; JP exam	Agreed Order: Low sanctions plus no delegation or supervision authority; administrative penalty of \$2,000 per violation
Discipline by peers, may be either an administrative violation or SOC	§164.051(a)(7) (describes offense: includes being subjected to disciplinary action taken by peers in a local, regional, state, or national professional medical ass'n or being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other action IF the board finds the action was based on unprofessional conduct or professional incompetence that was likely to harm the public and "was appropriate and reasonably supported by evidence submitted to the board." Expert panel report provides such evidence)	Agreed Order: See the applicable sanction for the violation of the Texas Medical Practice Act that most closely relates to the basis of the disciplinary action by peers. In addition, the licensee shall comply with all restrictions, conditions and terms imposed by the disciplinary action by peers to the extent possible.	Agreed Order: Public reprimand; comply with all restrictions, conditions and terms imposed by the disciplinary action by peers to the extent possible; and administrative penalty of \$3,000 per violation, plus directed CME and, if SOC case, a chart monitor. If not SOC: IME; anger management; CME in communications
Disciplined by another state or military may be either an administrative violation or a patient care violation	§164.051(a)(9) (describes the violation, requires that acts for which discipline imposed be the same or similar to acts in §164.052 or acts that are the same or similar to acts described in 164.051(a), for example rule violations, SOC violations, and all forms of impairment) Issue is only whether there was an order--no relitigation of prior facts, e.g., no new expert panel required	If no standard of care concerns, Remedial Plan with appropriate CME and \$500 administration fee; OR reciprocal Agreed Order as appropriate.	If out-of-state order is revocation, revocation is statutorily required.
Drug logs - Failure to maintain (see also, violation of state or federal law connected	§164.053(a)(2) (describes offense and refers to Chapter 481 Health and Safety Code and 21 USC §801 et seq.)	Remedial Plan: 8 hours of ethics/risk management and \$500 administration fee	Agreed Order: Public reprimand; 8 hours of ethics/risk management; \$2,000 admin

with practice)			penalty; JP exam
Employing a revoked/cancelled/ or suspended physician (see also aiding and abetting the unlicensed practice)	§164.052(a)(14) (describes offense: "directly or indirectly employs . . ."); §164.052(a)(15) (forbids associating in the practice of medicine with such a person)	Agreed Order: Public reprimand; \$3,000 admin penalty; take and pass JP exam	Agreed Order: Public reprimand; \$5,000 admin penalty; JP exam; no delegation authority
Failing to adequately supervise subordinates and improper delegation	§164.053(a)(8); §164.053(a)(9) - These sections describe the respective violations and define them as unprofessional conduct	Remedial Plan: 12 hours CME in supervision and delegation; consider ordering Rsp to furnish ED copies of delegation orders of develop and furnish delegation orders to ED; \$500 admin fee	Agreed Order: Low category sanctions plus: monitoring of practice; no delegation or supervision authority; administrative penalty of \$2,000 per violation; JP exam
Fails to keep proper medical records	§164.051(a)(3) (authorizes sanctioning rule violations); §164.051(a)(6) (authorizes sanctioning failure to practice acceptably consistent with public welfare); Rule §165.1 describes contents of an adequate medical record	Remedial Plan: CME in appropriate area; \$500 administration fee	Agreed Order: 8 or more hours of medical record-keeping, require in-person attendance if practical; chart monitor 8 – 12 cycles; \$2,000 admin penalty; JP exam; PACE course in medical record-keeping if prior order for inadequate record-keeping
Failure to Communicate with patient or other providers	§164.052(a)(5) (prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053)	Single incident: Remedial Plan--8 hours risk management CME to include patient communications, \$500 administration fee	Multiple instances: Agreed Order: Public reprimand, risk management and communications CME, fine, counseling, IME
Failure to display a "Notice Concerning Complaints" sign	Rule §178.3(a)(1) (requires display of sign)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management, \$1,000 admin penalty; JP exam
Failure to report dangerous behavior to governmental body	§164.052(a)(5) (prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053)	Single incident: Agreed Order: Admin penalty; CME in medical ethics; JP exam	Multiple or egregious: Agreed Order: Low category sanctions plus public reprimand and \$5,000 admin penalty
Failure to Pay/CS	Gov't Code; Family Code Chapter 232 (authorizes suspending licenses of any kind granted by the state to persons who do not pay support payments)	Suspension until such time as the licensee is no longer in default is required –statutorily required	Suspension until such time as the licensee is no longer in default - statutorily required



Failure to Pay Student Loan	§56.003 of the Texas Occupations Code	Agreed Order: public reprimand; within a certain time frame, provide proof of entering into an agreement with the loan servicing agent and/or default has been cured. Auto-suspend if violate order	Suspension until such time as the licensee is no longer in default
Failure to report suspected abuse of a patient by a third party, when the report of that abuse is required by law	§164.052(a)(5)(prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053); Rule §190.8(2)(O)	Remedial Plan; CME- 8 hrs risk management; JP Exam	Agreed Order: Low sanctions plus public reprimand; administrative penalty \$3,000 per violation
Fees, failure to provide explanation of	§101.203 (prohibits overbilling via ref to Health and Safety Code §311.025); §101.351 (establishes requirement and excludes application of §101.351 to physicians who post a billing practice sign in their waiting room)	Remedial Plan: 8 hours of ethics/risk management/billing practices and \$500 administration fee	Agreed Order: 8 - 16 hours of CME in ethics, risk management, billing practices, and CPT coding, \$2,000 admin penalty
Fraud on a diploma/in an exam	§164.052(a)(2); §164.052(a)(3) (describes offense as presenting an illegally or fraudulently obtained credential and cheating on exams)	Misrepresentations that do not make licensee/applicant ineligible: Remedial Plan - 8 hours of ethics/risk management and \$500 administration fee	If misrepresentation makes the licensee ineligible, then revocation.
Fraudulent, improper billing practices - requires that Respondent knows the service was not provided or knows was improper, unreasonable, or medically or clinically unnecessary. Should not sanction for an unknowing and isolated episode.	§101.203 (prohibits overbilling via ref to Health and Safety Code §311.0025); §164.053(a)(7) (prohibits violation of Health and Safety Code §311.0025)	Agreed order: Including, but not limited to: monitoring of billing practices; directed CME; restitution; and administrative penalty of \$1,000, but not to exceed the amount of improper billing	Agreed Order: Public reprimand, monitoring of practice, including billing practices; directed CME; restitution; and administrative penalty of \$3,000 per violation
Health care liability claim, failure to report	§160.052(b) (requires reporting health care liability claims to Board) Rule §176.2 and §176.9 (prescribes form for such reporting)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management; \$2,000 admin penalty; JP exam
Impairment (no history and no aggravating	§164.051(a)(4) (authorizes sanctions for practicing by those unable because of illness,	Refer to PHP--Public referral via agreed order required if	Voluntary surrender or temporary suspension

factors such as SOC, boundary violation, or felony)	drunkenness, excessive use of substances, or a mental or physical condition); §164.052(a)(4) (forbids use of alcohol or drugs in an intemperate manner that could endanger a patient's life)	case involves discharge from PHP, otherwise private referral is OK if appropriate	
Impairment (with history or SOC violation or boundary violation or felony)	§164.051(a)(4) (authorizes sanctions for practicing by those unable because of illness, drunkenness, excessive use of substances, or a mental or physical condition); §164.052(a)(4) (forbids use of alcohol or drugs in an intemperate manner that could endanger a patient's life)	Agreed Order: IME with report to ED or to panel at re-convened ISC, restrict practice or voluntary suspension pending report; if impairment is found at ISC, suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine, with conditions to be determined by a subsequent panel	Agreed Order: Suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine OR Suspension probated for 10 years with terms and conditions including but not necessarily limited to: drug testing; restrictions on practice; AA or NA attendance evidenced by logs; IME for psychiatric/psychological evaluation and treatment; proficiency testing OR revocation.
Intimidation of Complainant	§164.052(a)(5) (prohibits unprofessional conduct as defined by §164.053 or that is "likely to deceive or defraud the public")	Single Incident: Public reprimand and fine	Multiple/Egregious: Suspension and/or revocation; significant admin penalty; CME in ethics; JP exam
Medical Records: failure to release/ Overcharging for	§159.006 of the Act (information furnished by licensee); §164.051(a)(3) (prohibits rule violations); Rule §165.2 (requires release to proper person as described therein unless release would harm the patient and prescribes allowable charges	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management, \$2,000 admin penalty; JP exam. Also, §159.006 (Board may appoint temp or permanent custodian of patient records held by a physician)
Misleading advertising	§164.051(a)(3); §164.052(6) (prohibits false advertising); Rule §164.3, §164.	Remedial Plan: 8 hours of ethics/risk management, correct the advertisement and \$500 administration fee	Agreed Order: 16 hours of ethics/risk management in person, correct the advertisement, \$5,000 admin penalty, JP exam
Operating an unlicensed pharmacy	§158.001(b) (requires physicians to comply with Occupations Code Chapter 558 to operate a retail pharmacy)	Agreed Order: Must pass JP within 1 year, \$2,000 penalty, CME – medical ethics	Agreed Order: JP exam; cease operating pharmacy; CME - ethics and risk management

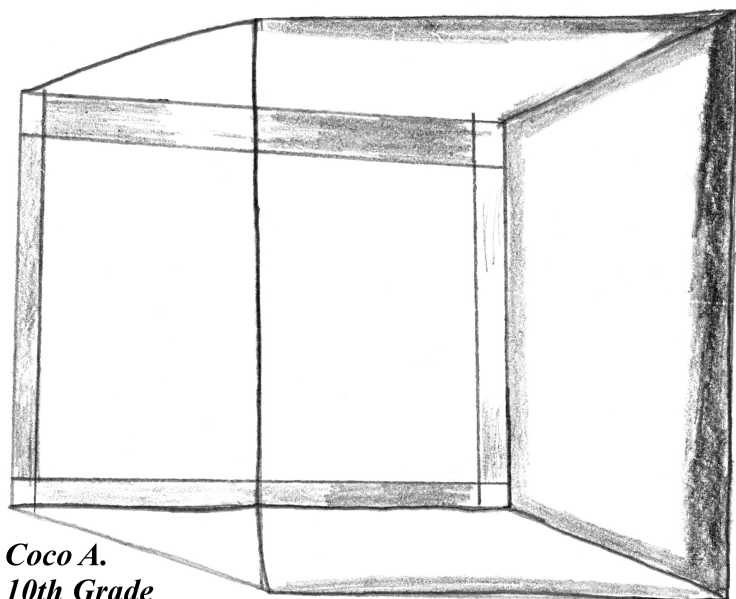
Overbilling: See fraudulent, improper billing			
Peer review action: See Discipline by peers			
Physician-patient relationship, Improper termination of	Rule §190.8(1)(J) (requires reasonable notice to patient of termination)	Single incident: Remedial Plan: 8 hours CME - 4 risk management and 4 ethics, \$500 administration fee	Multiple instances: Public reprimand, risk management, fine, CME - in physician-patient communications
Pill mills, unregistered pain clinics, overprescribing – See Delegation, Supervision, Prescribing			Revocation
Prescribing controlled substances to oneself, family members, or others in which there is a close personal relationship absent immediate need, without taking an adequate history, performing a proper physical examination, or creating and maintaining adequate records	§164.051(a)(6); Rule §190.8(1)(L), (M)	Agreed Order CME 8 hours medical recordkeeping, or risk management; 8 hours appropriate prescribing of controlled substances; JP Exam  If only one prescription and no evidence of pattern, the ISC Panel may consider a remedial plan.	Agreed Order Low sanctions plus public reprimand; restrictions on prescribing to self, family, and others in which there is a close personal relationship, restrictions on practice including restrictions on prescribing and administering controlled substances and dangerous drugs, administrative penalty of \$3,000 per violation
Prescribing dangerous drugs to oneself, family members, or others in which there is a close personal relationship without taking an adequate history, performing a proper physical examination, or creating and maintaining adequate records	§164.051(a)(6); Rule §190.8(1)(L), (M)	Remedial Plan: CME - 8 hours medical recordkeeping or risk management; JP Exam	Agreed Order: Low sanctions plus restrictions on prescribing to self, family, and others in which there is a close personal relationship and administrative penalty of \$2,000 per violation
Prescribing, writes false or fictitious prescriptions OR prescribes or	§164.053(a)(3)-(6) (defines the violations under unprofessional conduct)	Agreed Order: CME - 8 hours drug-seeking behavior, 8 hours risk	Agreed Order Low sanctions plus: restrictions on practice

dispenses drugs to a person who is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs OR writes prescriptions for or dispenses to a person who the physician should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs OR prescribes, administers, or dispenses in a manner inconsistent with public health and welfare		management; chart monitor at least 8 cycles; if Respondent does not use one, order to develop a pain management contract with specific provisions for termination of physician-patient relationship on a maximum of 3 violations by the patient including a positive test for a controlled substance not prescribed by Respondent, drug screens required by contract; JP Exam; admin penalty of \$3,000 per violation	including restrictions on prescribing and administering controlled substances and dangerous drugs; proficiency testing; directed CME; and increase administrative penalty to \$5,000 per violation.  If evidence of false or fictitious prescriptions, surrender DEA registration certificate for all controlled substance schedules.
Prescribing, nontherapeutic--or dispensing, or administering of drugs nontherapeutically, one patient, no prior board disciplinary history related to standard of care or care-related violations	§164.053(a)(5) (prohibits prescribing or administering any drug or treatment that is nontherapeutic per se or because of the way it is administered or prescribed)	Remedial Plan CME in appropriate area; \$500 administration fee per year.	Agreed Order: Proficiency testing, CME in appropriate area; chart monitor for 8 cycles; administrative penalty of \$3,000 per violation
Prescribing, nontherapeutic--or dispensing, or administering of drugs nontherapeutically, more than one patient or prior history of disciplinary action for standard of care or care-related violations	§164.053(a)(5) (prohibits prescribing or administering any drug or treatment that is nontherapeutic per se or because of the way it is administered or prescribed)	Agreed Order: Proficiency testing; CME in appropriate area; chart monitor 12 cycles; administrative penalty \$3,000 per violation	Agreed Order: Low sanctions plus restrictions on practice, including prescribing and administering controlled substances and dangerous drugs; and administrative penalty of \$5,000 per violation. If there are aggravating factors, revocation should be considered.
Referring a patient to a facility, laboratory, or pharmacy without disclosing the	§164.052(a)(5) (prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053);	Remedial Plan: CME 8 hrs ethics, 8 hrs risk management; within 30 days of order's	Agreed Order: Low sanctions plus public reprimand; JP Exam; administrative penalty

existence of the licensee's ownership interest in the entity to the patient	Rule §190.8(2)(H)	entry, provide proof of implement of form used to disclose ownership to interest	\$3,000 per violation
Refusal to respond to board subpoena or request for information or action	§160.009 of the Act and Rule §179.4 (relating to Request for Information and Records from Physicians); §164.052(a)(5), as further defined by Board Rule 190.8(2)(B) (prohibits Unprofessional conduct as defined by §164.053 or that is "likely to deceive or defraud the public")	If records eventually received, Remedial Plan of 8 hours of ethics/risk management and \$500 administration fee	If records never received and intentionally withheld, Agreed Order: public reprimand; JP exam; admin penalty; CME in medical ethics
Reporting false or misleading information on an initial application for licensure or for licensure renewal	§164.052(a)(1) (forbids submission of false or misleading statements of documents in an application for a license)	Misrepresentations that do not make licensee/applicant ineligible: Remedial Plan - 8 hours of ethics/risk management and \$500 administration fee	If misrepresentation makes the licensee ineligible, then revocation.
Reporting false or misleading information to the Board (non-licensing matter)	§164.052(a)(5), as further defined by Rule §190.8(2)(C)	Remedial Plan - 8 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management JP Exam administrative penalty of \$3,000
Self-Prescribing: See "Prescribing to self."			
Solicitation of patients/Drumming	§165.155 (provides a Class A misdemeanor penalty)	Agreed Order (if no conviction): 8 hours of ethics/risk management and \$500 administration fee	Egregious: Agreed Order: Public reprimand, chart sign off, \$5,000 fine, JP exam, CME in medical ethics OR referral to county attorney for prosecution as Class A misdemeanor under §165.155(e)
Standard of Care - one patient, no prior SOC or care-related violations	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare)	Remedial Plan*: CME in appropriate area; \$500 administration fee per year. *No RP if case concerns a patient death	Agreed Order: Proficiency testing; directed CME; chart monitor for 8 cycles; administrative penalty of \$3,000 per violation
Standard of care - one patient, one prior SOC or care-related	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare)	Agreed Order: Chart monitor for 8 cycles; directed CME, administrative penalty of \$3,000 per	Agreed Order: Limiting the practice of the person or excluding one or more specified

violation		violation	activities of medicine; proficiency testing; directed CME; monitoring of the practice (either chart monitor for 12 cycles or supervising physician for a number of cases or specified period of time); public reprimand; and administrative penalty of \$5,000 per violation.
Standard of care - one patient, more than one prior SOC or care-related violation	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence professional incompetence likely to injure the public); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled)	Agreed Order: Limiting the practice of the person or excluding one or more specified activities of medicine; proficiency testing; directed CME; monitoring of the practice (either chart monitor for 12 cycles or supervising physician for a number of cases or specified period of time); administrative penalty of \$ 5,000 per violation	Agreed Order: K-STAR or PACE or equivalent proficiency testing; directed CME; chart monitoring (either chart monitor for 16 cycles or supervising physician for a number of cases or specified period of time), restricting the practice; withdrawal of prescribing privileges or delegating privileges; public reprimand; administrative penalty of \$7,000 per violation
Standard of care - more than one patient, no prior SOC or care-related violation	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence professional incompetence); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled for \$50,000 in a 5-year period)	Agreed Order: Chart Monitor for 8 cycles; CME in appropriate area; administrative penalty of \$3,000 per violation	Agreed Order: Proficiency testing; directed CME; chart monitor 12 cycles; public reprimand; and administrative penalty of \$5,000 per violation
Standard of care - more than one patient, prior SOC or care-related violations	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence professional incompetence); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled for \$50,000 in a 5-year period)	Agreed Order: Proficiency testing; directed CME; monitoring for 12 cycles; requiring oversight or restricting of the practice; public reprimand; and administrative penalty of \$5,000 per violation.	Suspension or revocation
Supervision of midlevels,			

failure to perform: See "Failing to adequately supervise subordinates and improper delegation."			
Unlicensed practice of medicine	§165.052(a) (see definition of "practice of medicine" at §151.002(a)(13))	Cease and Desist Order and referral of Order to District Attorney or Attorney General	Cease and Desist Order; referral to Attorney General's office for injunction or civil penalties
Unsound Mind - adjudicated (See also "Impairment")	§164.051(a)(5) (enables Board to take action if a licensee or applicant "is found by a court to be of unsound mind")	Suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine; IME and return to ISC panel with results	Temporary suspension prior to seeking revocation; show cause hearing under §164.056
Violation of Board Order	§164.052(a)(5) (enables sanctioning of unprofessional or dishonorable conduct as defined by §164.053 or conduct that injures the public)	Administrative in nature- Agreed Order: Administrative Penalty of \$1,000; Substantive in nature- extension of order and increase the terms of the original order	Agreed Order: Low sanctions plus: public reprimand; admin penalty of \$3,000 - \$5,000
Violation of state or federal law connected with physician's practice	§164.053(a)(1) (authorizes sanctions via §164.052(a)(5) for breaking any law that "is connected with the physician's practice of medicine")	If criminal law, see above under "Crime." If civil law, Agreed Order: must pass JP exam and 8 hours of risk management/ethics	Agreed Order: public reprimand; restriction of license; surrender of controlled substance privileges; plus low sanctions



*Coco A.*  
*10th Grade*



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Department of Aging and Disability Services

### Correction of Error

The Department of Aging and Disability Services (DADS) adopted new 40 TAC §§19.2701 - 19.2709, concerning Nursing Facility Responsibilities Related to Preadmission Screening and Resident Review (PASRR), in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4373). DADS adopted §19.2703, concerning definitions, with changes to the proposal and republished the rule text. On page 4375, first column, §19.2703(6), the definition of "DD--Developmental disability," included the word "conditions" in error. The corrected paragraph reads as follows:

"(6) DD--Developmental disability. A disability that meets the criteria described in the definition of "persons with related conditions" in Code of Federal Regulations (CFR) Title 42, §435.1010."

TRD-201502492

## Office of the Attorney General

### Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. David M. Mobley*, Cause No. D-1-GV-13-001400; in the 353rd Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant David M. Mobley maintained unauthorized municipal solid waste on his property in El Campo, Wharton County, Texas, in violation of the Texas Water Code, the Texas Solid Waste Disposal Act, and the rules promulgated thereunder by the Texas Commission on Environmental Quality. After the State filed suit, Defendant cleaned up the unauthorized municipal solid waste pit on the property in 2014.

Proposed Agreed Final Judgment: The proposed Agreed Final Judgment assesses against Defendant civil penalties in the amount of \$9,500, and attorney's fees in the amount of \$7,500. In addition, Defendant is enjoined from causing, suffering, allowing or permitting the dumping, storage, and/or disposal of additional municipal solid waste on the property without authorization.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Emily Petrick, Assistant Attorney General,

Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201502610

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: July 7, 2015

### Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health & Safety Code.

Case Title and Court: *The State of Texas, acting on behalf of the Texas Commission on Environmental Quality v. Greenfill C&D Recycle Centers, LLC, d/b/a Alamo Recycle Centers, a/k/a Greenfill ACI, LLC and ACI Partners, LLC*; Cause No. D-1-GV-10-000614; in the 98th Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: The case involves Greenfill C&D Recycle Centers, LLC, an unlicensed facility located at 2035 Ackerman Road, San Antonio, Texas. The defendant is alleged to have stored and/or disposed of numerous piles of municipal solid waste, household trash, and piles of lumber at the facility without authorization from the Texas Commission on Environmental Quality.

Proposed Agreed Judgment: The Agreed Final Judgment orders the defendant to pay civil penalties and costs of prosecution to the State. Defendant agrees to pay civil penalties of \$20,000 to the State of Texas. The defendant will also pay attorney's fees to the State of Texas in the amount of \$10,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Megan M. Neal, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201502611

Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: July 7, 2015

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**Cancer Prevention and Research Institute of Texas**

**Request for Applications C-16-ESTCO-1 Established Company Product Development Awards**

This award mechanism seeks to fund the development of innovative products, services, and infrastructure with significant potential impact on patient care. Companies must have at least one round of professional institutional investment, and must be headquartered in Texas. The proposed project must further the development of new products for the diagnosis, treatment, or prevention of cancer; must establish infrastructure that is critical to the development of a robust industry; or must fill a treatment or research gap.

Award: Maximum amount of \$20 M; Maximum duration of 36 months.

A detailed Request For Applications (RFA) is available online at [www.cprit.state.tx.us](http://www.cprit.state.tx.us). Applications will be accepted beginning at 7:00 a.m. central time on August 3, 2015, through 3:00 p.m. central time on September 16, 2015, and must be submitted via the CPRIT Application Receipt System ([www.CPRITGrants.org](http://www.CPRITGrants.org)). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201502554  
Heidi McConnell  
Chief Operating Officer  
Cancer Prevention and Research Institute of Texas  
Filed: July 6, 2015

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**Request for Applications C-16-NEWCO-1 New Company Product Development Awards**

This award mechanism seeks to support early-stage "start-up" companies in the development of new products for the diagnosis, treatment, or prevention of cancer. Companies must have a significant presence in Texas or be willing to relocate to Texas.

Award: Maximum amount of \$20 M; Maximum duration of 36 months.

A detailed Request For Applications (RFA) is available online at [www.cprit.state.tx.us](http://www.cprit.state.tx.us). Applications will be accepted beginning at 7:00 a.m. central time on August 3, 2015, through 3:00 p.m. central time on September 16, 2015, and must be submitted via the CPRIT Application Receipt System ([www.CPRITGrants.org](http://www.CPRITGrants.org)). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201502555  
Heidi McConnell  
Chief Operating Officer  
Cancer Prevention and Research Institute of Texas  
Filed: July 6, 2015

**Request for Applications C-16-RELCO-1 Company Relocation Product Development Awards**

This award mechanism seeks to support companies or limited partnerships that are willing to relocate to Texas in developing new products for the diagnosis, treatment, or prevention of cancer; to establish in-

frastructure that is critical to the development of a robust industry; or to fill a treatment or research gap. Companies must have at least one round of professional institutional investment.

Award: Maximum amount of \$20 M; Maximum duration of 36 months.

A detailed Request For Applications (RFA) is available online at [www.cprit.state.tx.us](http://www.cprit.state.tx.us). Applications will be accepted beginning at 7:00 a.m. central time on August 3, 2015, through 3:00 p.m. central time on September 16, 2015, and must be submitted via the CPRIT Application Receipt System ([www.CPRITGrants.org](http://www.CPRITGrants.org)). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201502557  
Heidi McConnell  
Chief Operating Officer  
Cancer Prevention and Research Institute of Texas  
Filed: July 6, 2015

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**Comptroller of Public Accounts**

**Notice of Contract Award**

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces the award of the following contract as a result of Request for Proposals for the Endangered Species Research Projects for the Louisiana Pine Snake ("RFP 212d"):

Texas A&M AgriLife Research, a member of The Texas A&M University System, 1500 Research Parkway, A110, 2260 TAMU, College Station, Texas 77843-2260. The total maximum amount of the contract is \$149,894.00. The term of the contract is July 1, 2015 through December 31, 2016.

The notice of issuance was published in the November 14, 2014, issue of the *Texas Register* (39 TexReg 9106).

TRD-201502627  
Laurie Velasco  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: July 8, 2015

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**Notice of Intent to Amend Contract**

Pursuant to Chapters 403 and Chapter 2254, Subchapter B, Texas Government Code, and Chapter 54, Texas Education Code, the Texas Comptroller of Public Accounts ("Comptroller"), on behalf of the Texas Prepaid Higher Education Tuition Board ("Board"), announces this notice of intent to amend an existing major consulting services contract with Hewitt Ennis Knupp, Inc., located at 10 South Riverside Drive, Suite 1600, Chicago, IL 60606.

The contract was awarded under Request for Proposals (RFP #203a), published in the January 13, 2012, issue of *Texas Register* (37 TexReg 132), for the provision of consulting and technical advice and assistance to the Comptroller and the Board in the ongoing administration of the Texas Guaranteed Tuition Plan, the Texas Tuition Promise Fund®, the Texas College Savings Plan®, and the LoanStar 529 Plan®. The term of the contract is September 1, 2012 through August 31, 2015. The amendment will extend the term of the contract to August 31, 2016. The total maximum amount of the contract is \$300,000.00 per annum.

TRD-201502624

Jason C. Frizzell  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: July 8, 2015

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**Office of Consumer Credit Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Financial Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/13/15 - 07/19/15 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/13/15 - 07/19/15 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 07/01/15 - 07/31/15 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 07/01/15 - 07/31/15 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

<sup>3</sup> For variable rate commercial transactions only.

TRD-201502609  
Leslie Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: July 7, 2015

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**Texas Council for Developmental Disabilities**

**Notice of Revision: Policy Fellows Request for Proposals**

The Texas Council for Developmental Disabilities published a Request for Proposals (RFP) for TCDD Policy Fellow in the June 25, 2015, issue of the *Texas Register*. That Request for Proposals has been revised in the "Project Description" section to read as follows:

"Fellows must be graduates of post-graduate programs in law, social work, public policy or other related programs; or be parents, self-advocates or siblings of persons with disabilities who have demonstrated post-graduate level skills and knowledge in public policy advocacy." The change adds parents who have demonstrated post-graduate level skills and knowledge in public policy advocacy to the list of eligible individuals.

The remainder of the RFP remains the same.

Additional information concerning this Request for Proposals (RFP) may be obtained at [www.DDSuite.org](http://www.DDSuite.org). More information about TCDD may be obtained through TCDD's website at [www.tcdd.texas.gov/](http://www.tcdd.texas.gov/). All questions pertaining to this RFP should be directed in writing to Joanna Cordry, Planning Coordinator, via email at [Joanna.Cordry@tcdd.texas.gov](mailto:Joanna.Cordry@tcdd.texas.gov) or telephone at (512) 437-5410.

Deadline: Proposals must be submitted through [www.DDSuite.org](http://www.DDSuite.org) by July 20, 2015. Proposals will not be accepted after the due date.

TRD-201502495

Martha Cantu  
Operations Director  
Texas Council for Developmental Disabilities  
Filed: July 2, 2015

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**Texas Commission on Environmental Quality**

**Agreed Orders**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is August 17, 2015. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on August 17, 2015. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: ASPRI INVESTMENTS, LLC dba BD Food Mart; DOCKET NUMBER: 2015-0537-PST-E; IDENTIFIER: RN102373958; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Bell-Milam-Falls Water Supply Corporation; DOCKET NUMBER: 2015-0392-WQ-E; IDENTIFIER: RN101233922; LOCATION: Lott, Bell County; TYPE OF FACILITY: public water supply; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: \$1,550; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Calumet San Antonio Refining, LLC; DOCKET NUMBER: 2014-0769-MLM-E; IDENTIFIER: RN101485183; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: pe-

troleum refinery; RULES VIOLATED: 30 TAC §327.5(a) and §335.4 and TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of industrial solid waste into or adjacent to waters in the state and to immediately abate and contain the spill or discharge; and 30 TAC §327.3(b) and TWC, §26.039(b), by failing to notify the TCEQ as soon as possible after the discovery of an unauthorized discharge of approximately 1,008 gallons of jet fuel at the facility; PENALTY: \$37,225; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: City of Eden; DOCKET NUMBER: 2015-0637-PWS-E; IDENTIFIER: RN101405439; LOCATION: Eden, Concho County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 15 picoCuries per liter for gross alpha particle activity, based on the running annual average; PENALTY: \$217; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(5) COMPANY: Eggemeyer Land Clearing, LLC; DOCKET NUMBER: 2015-0241-WQ-E; IDENTIFIER: RN106324650; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: brush recycling facility; RULES VIOLATED: 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR05AU47, Part III, Section A.6, by failing to timely submit a copy of the Stormwater Pollution Prevention Plan (SWP3); PENALTY: \$250; ENFORCEMENT COORDINATOR: Gregory Zychowski, (512) 239-3158; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Ellis Odom and Linda Odom; DOCKET NUMBER: 2015-0706-MSW-E; IDENTIFIER: RN106123680; LOCATION: Buna, Jasper County; TYPE OF FACILITY: unauthorized disposal facility; RULE VIOLATED: 30 TAC §330.15(a), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: FROST CRUSHED STONE COMPANY INCORPORATED dba Simon Bros Quarry Junction Plant; DOCKET NUMBER: 2013-1729-MLM-E; IDENTIFIER: RN105665293; LOCATION: Junction, Kimble County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §342.25, by failing to register the site as an aggregate production operation by October 31, 2012; 30 TAC §281.25(a)(4) and §324.1, 40 Code of Federal Regulations §279.22(c), and Texas Pollutant Discharge Elimination System (TPDES) Multi-Sector General Permit (MSGP) Number TXR05AF23, Part III, Section (A)(4)(e)(3) and (5), by failing to label or clearly mark used oil storage containers with the words "Used Oil" and failing to implement cleanup procedures at the site; 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization prior to the operation of emission sources; 30 TAC §334.127(a), by failing to register an aboveground storage tank with the TCEQ; 30 TAC §335.4 and TWC, §26.121, by failing to prevent the unauthorized discharge of industrial solid waste; 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibitions on outdoor burning; and 30 TAC §281.25(a)(4) and TPDES MSGP Permit Number TXR05AF23 Part III, Section A(3)(d)(8), by failing to develop a complete site map for the site; PENALTY: \$13,044; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(8) COMPANY: GLASSCOCK COUNTY COOP; DOCKET NUMBER: 2015-0711-PWS-E; IDENTIFIER: RN101427961; LOCATION: Garden City, Glasscock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: \$660; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(9) COMPANY: Har-Conn Aerospace, Incorporated dba Har-Conn Chrome Company of Texas; DOCKET NUMBER: 2014-0306-MLM-E; IDENTIFIER: RN100794866; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: plating facility; RULES VIOLATED: 30 TAC §335.69(a)(1)(B) and 40 Code of Federal Regulations (CFR) §265.193(a), by failing to provide adequate secondary containment for hazardous waste tanks; 30 TAC §335.9(a)(2) and (B), by failing to provide a complete and accurate Annual Waste Summary detailing the management of each hazardous and Class I waste generated on-site during the report calendar year; 30 TAC §335.6(c), by failing to update the facility's Notice of Registration for any changes or additional information within 90 days of the occurrence of such change or of becoming aware of additional information; 30 TAC §335.69(a)(4) and 40 CFR §265.16, by failing to have facility personnel successfully complete a program of classroom instruction or on-the-job training that ensures the facility's compliance with hazardous waste management procedures and response to emergencies; 30 TAC §335.69(a)(2) and (3) and 40 CFR §262.34(a)(2) and (3), by failing to clearly label all hazardous waste containers with the words "Hazardous Waste" and mark each container with the date on which the accumulation period began; 30 TAC §§335.62, 335.503, 335.504, and 335.513 and 40 CFR §262.11, by failing to conduct hazardous waste determinations and classifications; 30 TAC §335.69(a)(1)(A) and §335.112(a) and 40 CFR §265.173(a), by failing to keep containers of hazardous waste closed except when adding or removing waste; 30 TAC §335.69(a)(1)(B) and 40 CFR §265.196, by failing to remove from service a tank system from which there has been a leak or spill; 30 TAC §335.262 and 40 CFR §273.35(c), by failing to properly label universal waste containers with an accumulation start date; 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial hazardous waste; 30 TAC §335.69(a)(1)(A) and §335.112(a)(9) and 40 CFR §262.34(a)(1)(i) and §265.174, by failing to conduct weekly inspections of Container Storage Areas and hazardous waste tanks; 30 TAC §335.9 and 40 CFR §265.195(c) and (g), by failing to maintain records of all hazardous and industrial solid waste activities; 30 TAC §335.10(a) and 40 CFR §262.20(a), by failing to use a manifest when transporting waste off-site for treatment, storage, or disposal; and 30 TAC §324.6 and 40 CFR §279.22(c)(1), by failing to label or clearly mark used oil containers the words "Used Oil"; PENALTY: \$120,720; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: HEALTHSOUTH CORPORATION dba Healthsouth Rehabilitation Hospital of Beaumont; DOCKET NUMBER: 2015-0250-PST-E; IDENTIFIER: RN101762441; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: emergency backup generators; RULES VIOLATED: 30 TAC §334.126(a)(1), by failing to submit a written notification with the TCEQ at least 30 days prior to installing an aboveground storage tank (AST); 30 TAC §334.127(a)(1) and (c), by failing to register with the agency an AST in existence on or after September 1, 1989; and 30 TAC §334.125(b), by failing to make available to a common carrier a valid, current TCEQ tank registration certificate before accepting delivery of a regulated substance into the AST; PENALTY: \$2,918; ENFORCEMENT COORDINATOR:

Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: HEART O' TEXAS COUNCIL OF THE BOY SCOUTS OF AMERICA dba Longhorn Council, Boy Scouts of America; DOCKET NUMBER: 2015-0297-PWS-E; IDENTIFIER: RN101229219; LOCATION: Palo Pinto, Palo Pinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c)(4), by failing to provide all water storage tanks with a liquid level indicator located at the tank site; 30 TAC §290.45(d)(2)(B)(iv) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide at least two service pumps with a total capacity of three times the maximum daily demand (MDD); 30 TAC §290.45(d)(2)(B)(i) and THSC, §341.0315(c), by failing to provide a well capacity which meets or exceeds the MDD; 30 TAC §290.46(f)(2), (3)(A)(i)(II), (ii)(II), (iv), (v), and (vi), by failing to maintain water works operation and maintenance records and make them readily available for review by commission personnel upon request; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines and related appurtenances in a watertight condition; 30 TAC §290.46(m)(6), by failing to maintain pumps, motors, valves, and other mechanical devices in good working condition; 30 TAC §290.46(u), by failing to plug and seal abandoned public water supply wells in accordance with 16 TAC Chapter 76 or submit the test results proving that the wells are in a non-deteriorated condition; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well; 30 TAC §290.42(l), by failing to provide a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.45(f)(3), by failing to have a water purchase contract that establishes the maximum rate at which water may be drawn on a daily and hourly basis, or in the absence of specific maximum daily or maximum hourly rates in the contract shall provide for a uniform purchase rate for the contract period; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards for construction and operation that is readily accessible outside the chlorination room and provide a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage that is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzers at least once every 90 days using chlorine solutions of known concentrations; and 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements that cover the land within 150 feet for the facility's two wells; PENALTY: \$1,722; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: LASS WATER COMPANY INCORPORATED; DOCKET NUMBER: 2015-0327-PWS-E; IDENTIFIER: RN104443734; LOCATION: Groesbeck, Limestone County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(e), by failing to provide an intruder-resistant fence with

lockable gates in order to protect the facility's pressure tank; 30 TAC §290.45(b)(1)(A)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum pressure tank capacity of 50 gallons per connection; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.39(e)(1) and (h)(1) and THSC, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply; and 30 TAC §290.46(f)(2), (3)(B)(iv) and (D)(ii), by failing to maintain water works operation and maintenance records and make them readily available to commission personnel upon request; PENALTY: \$506; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: LISANTI REALTY CORPORATION dba Lisanti Food Service; DOCKET NUMBER: 2015-0671-PST-E; IDENTIFIER: RN102047289; LOCATION: Irving, Dallas County; TYPE OF FACILITY: wholesale food distributing service; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Navarro Midstream Services, LLC; DOCKET NUMBER: 2015-0554-AIR-E; IDENTIFIER: RN106876501; LOCATION: Encinal, Webb County; TYPE OF FACILITY: oil and gas production plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit Number O3637/Oil and Gas General Operating Permit Number 514 Site-wide Requirements (b)(2), and Texas Health and Safety Code, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: \$2,888; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(15) COMPANY: PETROTEX FUELS, INC. dba Big Thicket Country Store; DOCKET NUMBER: 2015-0467-PST-E; IDENTIFIER: RN101871093; LOCATION: Lumberton, Hardin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(d)(9) and Texas Health and Safety Code (THSC), §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; 30 TAC §115.244(1) and THSC, §382.085(b), by failing to conduct daily inspections of the Stage II vapor recovery system; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months, or upon major system replacement or modification, whichever occurs first; PENALTY: \$7,132; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Pulte Homes of Texas, L.P.; DOCKET NUMBER: 2015-0396-EAQ-E; IDENTIFIER: RN107214371; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: residential development project; RULES VIOLATED: 30 TAC §213.4(k) and §213.5(f)(2)(B), Organized Sewage Collection System (SCS) Plan Number 13-14052302 Standard Conditions Number 10, and Water

Pollution Abatement Plan (WPAP) Number 13-14040901 Standard Conditions Number 12, by failing to immediately suspend all regulated activities near the sensitive feature discovered during construction until receiving executive director approval for the methods proposed to protect a sensitive feature; and 30 TAC §213.4(k) and §213.5(c)(3)(L), SCS Plan Number 13-14052302 Standard Conditions Number 7, and WPAP Number 13-14040901 Standard Conditions Number 8, by failing to implement temporary sediment control measures to prevent pollutants from entering a sensitive feature discovered during construction; PENALTY: \$7,063; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Ryan Shapiro; DOCKET NUMBER: 2015-0283-EAQ-E; IDENTIFIER: RN107961674; LOCATION: Rollingwood, Travis County; TYPE OF FACILITY: single family residence; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$8,750; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(18) COMPANY: SAGERTON WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-0557-PWS-E; IDENTIFIER: RN101218386; LOCATION: Sagerton, Haskell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM), based on the locational running annual average and failing to provide public notification and provide a copy of the notification to the executive director regarding the failure to comply with the MCL for TTHM for the fourth quarter of 2014; PENALTY: \$165; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: Tae Kil Kim dba Bok Food Mart and Washateria; DOCKET NUMBER: 2015-0628-PST-E; IDENTIFIER: RN103134953; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.602(a), by failing to designate, train, and certify at least one individual for each class of operator - Class A, Class B, and Class C - at the facility; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$18,000; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Tegn and Shiva, LLC dba Combes Auto Truck Stop; DOCKET NUMBER: 2015-0296-PST-E; IDENTIFIER: RN101680197; LOCATION: Combes, Cameron County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$7,630; ENFORCEMENT COORDINATOR: Steven Van Landingham,

(512) 239-5717; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(21) COMPANY: Tejas Production Services, Incorporated; DOCKET NUMBER: 2015-0739-AIR-E; IDENTIFIER: RN107276545; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: industrial vessel fabrication; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain proper authorization prior to conducting surface coating operations; and 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent nuisance conditions; PENALTY: \$2,188; ENFORCEMENT COORDINATOR: Farhaudd Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(22) COMPANY: Total Petrochemicals and Refining USA, Incorporated; DOCKET NUMBER: 2015-0301-IHW-E; IDENTIFIER: RN100212109; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing facility; RULES VIOLATED: 30 TAC §335.152(a)(13), 40 Code of Federal Regulations (CFR) §264.340(b)(1) and §264.343 and Industrial Hazardous Waste (IHW) Permit Number 50374, Permit Provision (PP) II.C. and V.H.1, by failing to comply with maximum achievable control technology operating parameter requirements; and 30 TAC §335.69(a)(2), 40 CFR §262.34(a)(2) and IHW Permit Number 50374, PP II.C.1 and II.C.2, by failing to label hazardous waste containers with the beginning date of accumulation; PENALTY: \$19,251; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: TRI TRY WATER CORPORATION; DOCKET NUMBER: 2015-0487-PWS-E; IDENTIFIER: RN106903289; LOCATION: Aspermont, Stonewall County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on a locational running annual average; PENALTY: \$345; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201502604  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: July 7, 2015



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 17, 2015**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and

rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 17, 2015**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: CITGO Refining and Chemicals Company L.P.; DOCKET NUMBER: 2014-0911-AIR-E; TCEQ ID NUMBER: RN100238799; LOCATION: 7350 Interstate Highway 37, Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: Texas Health and Safety Code, §382.085(b); 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4); Federal Operating Permit O1420, General Terms and Conditions, Special Terms and Conditions Number 13, New Source Review (NSR) Permit Numbers 8778A and PSDTX408M3, Special Condition (SC) Number 1; and NSR Permit Numbers 7741A and PSDTX337M1, SC Number 1, by failing to prevent unauthorized emissions; PENALTY: \$11,626; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: Juan Antonio Diaz dba Tony's Tire Service and dba Tony's Tire Shop; DOCKET NUMBER: 2013-2144-MSW-E; TCEQ ID NUMBERS: RN105359392 and RN106967490; LOCATION: 17115 Martinez Losoya Road, San Antonio (transporter facility), 13495 Somerset Road, Von Ormy (processing facility), Bexar County; TYPE OF FACILITY: tire transporting business and a tire processing facility; RULES VIOLATED: 30 TAC §328.57(c)(3), by failing to ensure that used or scrap tires or tire pieces are transported to an authorized facility; 30 TAC §§328.56, 328.59, and 328.60(a), by failing to obtain a scrap tire storage registration for the tire facility prior to storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground, or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers or in enclosed or lockable containers; 30 TAC §328.58, by failing to document all used or scrap tires or tire pieces generated at, transported to, and/or removed from the facilities by completing a manifest form; and 30 TAC §328.54(d), by failing to identify any vehicle or trailer used to transport used or scrap tires or tire pieces on both sides and the rear of the vehicle; PENALTY: \$14,300; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201502605

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 7, 2015



## Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 17, 2015**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 17, 2015**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: GOOD TIME STORES, INC. d/b/a Good Time Store 26; DOCKET NUMBER: 2014-0116-AIR-E; TCEQ ID NUMBER: RN101695245; LOCATION: 1421 RV Drive, El Paso, El Paso County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §114.100(a), by failing to comply with the minimum oxygen content of 2.7% by weight of gasoline during the control period from October 1, 2013 - March 31, 2014; PENALTY: \$1,275; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(2) COMPANY: John Clark Zimmerman; DOCKET NUMBER: 2014-1810-LII-E; TCEQ ID NUMBER: RN106838287; LOCATION: 3609 Palomino Drive, Arlington, Tarrant County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, installing, repairing, or servicing an irrigation system; PENALTY: \$964; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Joshua G. Duke; DOCKET NUMBER: 2014-1878-LII-E; TCEQ ID NUMBER: RN105764138; LOCATION: 807 North-

west Drive, Longview, Gregg County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, installing, altering, repairing, or servicing an irrigation system; PENALTY: \$937; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: L FAKIR INC. d/b/a West Hardy Diamond; DOCKET NUMBER: 2013-0520-PST-E; TCEQ ID NUMBER: RN102435146; LOCATION: 11419 West Hardy Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A) by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.72, by failing to report a suspected release of regulated substance to the TCEQ within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: \$21,100; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201502606

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 7, 2015



#### Notice of Public Meeting Regarding the El Paso Plating Works Proposed State Superfund Site

The purpose of the meeting is to obtain public input and information concerning the proposal to delete the El Paso Plating Works Proposed State Superfund Site (the site) from the state Superfund registry.

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ) is issuing this public notice of intent to delete the site from its proposed for listing status on the state Superfund registry. The state Superfund registry is the list of state Superfund sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The TCEQ is proposing this deletion because the ED has determined that due to the removal actions performed, the site no longer presents such an endangerment.

The site, including all land, structures, appurtenances, and other improvements, is approximately 0.25 acres and is located at 2422 Wyoming Avenue in El Paso, El Paso County, Texas. The site also includes any areas where hazardous substances came to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

Former operations at the site included plating chromium, zinc, silver, tin, nickel, and copper finishes to different metal components. The facility operated from approximately 1952 to 1995. During the early 1990s the El Paso Public Utilities Service Board issued El Paso Plating Works notices of violation asserting the company produced excessive chromium and nickel wastewater discharges. In 1996 - 1997, the Environmental Protection Agency's (EPA) Emergency Response Branch removed 4,500 gallons of liquid oxidizer and corrosive wastes and 100,000 pounds of oxidizer and corrosive sludge and other solids as part of a removal action at the site.

The TCEQ assumed environmental activities in 1999 and proposed the site to the state Superfund registry in 2000.

In 2000, the TCEQ began the remedial investigation, sampling soil and water on the site and performing an asbestos inspection. The TCEQ completed asbestos abatement activities in 2001 and performed a removal action in 2003 to excavate contaminated soils with off-site disposal at a permitted facility. The removal action constituted the final remedy, and the site is suitable for industrial and commercial purposes. The remedial investigation determined that there was no groundwater contamination associated with the former metals plating operations.

Volatile organic compounds were detected in the groundwater at concentrations above Texas Risk Reduction Program protective concentration levels (PCLs). The releases of these chemicals were determined to be unrelated to operations at the site and were referred to the appropriate regulatory programs for further assessment and any necessary cleanup. As of August 2014, groundwater monitoring at the site indicated that the groundwater no longer contained volatile organic compounds from onsite or offsite sources at concentrations exceeding PCLs. Notice has been filed in the real property records in El Paso County that no further remediation is required as long as the property is not used for residential purposes.

As a result of the removal actions that have been performed at the site, the ED has determined that the site no longer presents an imminent and substantial endangerment to public health and safety or the environment. Therefore, the site is eligible for deletion from the state Superfund registry as provided by 30 Texas Administrative Code (TAC) §335.344.

In accordance with 30 TAC §335.344(b), the TCEQ is holding a public meeting to receive comment on this proposed deletion. This meeting is not a contested case hearing within the meaning of the Texas Government Code, Chapter 2001. The meeting will be held on August 20, 2015, at 5:30 p.m., at the El Paso Main Library, at 501 North Oregon Street, El Paso, Texas 79901.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., on August 19, 2015 and should be sent in writing to Omar Valdez, Project Manager, TCEQ, Remediation Division, MC 136, P.O. Box 13087, Austin, Texas 78711-3087, or by facsimile to (512) 239-2450. The public comment period for this action will end at the close of the public meeting on August 20, 2015.

A portion of the record for the site, including documents pertinent to the ED proposed deletion, is available for review during regular business hours at the El Paso Main Library, 501 North Oregon Street, El Paso, Texas 79901. The telephone number for the library is (915) 543-5433. Copies of the public record file may be reviewed during business hours at the TCEQ's Central File Room on the first floor of Building E, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-2900. Additional files can be obtained by contacting the TCEQ Project Manager, Omar Valdez, at (512) 239-6858. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E. Information is also available regarding the state Superfund program at: <http://www.tceq.texas.gov/remediation/superfund/index.html>. Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-5674. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call John Flores, TCEQ Community Relations Coordinator, at (800) 633-9363.



TRD-201502602  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: July 7, 2015



## Notice of Water Quality Application

### INFORMATION SECTION

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

Golden Spread Electric Cooperative which proposes to operate Antelope Elk Energy Center, has applied to the Texas Commission on Environmental Quality (TCEQ) for a minor amendment to TCEQ Permit No. WQ0005109000 to reduce the proposed flow for Phase II from a daily average flow not to exceed 71,014 gallons per day (GPD) to a daily average flow not to exceed 35,507 GPD and from a daily maximum flow not to exceed 155,520 GPD to a daily maximum flow not to exceed 77,760 GPD and to remove Item C from Part V, Special Provisions. The existing permit authorizes the disposal of reverse osmosis reject water, evaporative cooler blowdown, and stormwater runoff at a daily average flow not exceed 17,754 GPD via evaporation for Phase I, and the disposal of reverse osmosis reject water, evaporative cooler blowdown, and stormwater at a daily average flow not exceed 71,014 GPD via evaporation for Phase II. This permit will not authorize the discharge of pollutants into water in the state. The facility and disposal site will be located at 1454 County Road 315, north of County Road 315, east of Interstate Highway 27, and bounded on the east by County Road P in Hale County, Texas 79311.

If you need more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al (800) 687-4040.

TRD-201502621  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: July 8, 2015



## Request for Nominations - Municipal Solid Waste Management and Resource Recovery Advisory Council

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for nine individuals to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council (Advisory Council) to fill the following positions: 1) a professional engineer from a private engineering firm with experience in the design and management of solid waste facilities (expires 8/2021); 2) a registered waste tire processor (expires 8/2021); 3) an elected official from a county with a population less than 150,000 (expires 8/2021); 4) a representative from a planning region (expires 8/2021); 5) a solid waste professional with experience managing or operating a commercial solid waste landfill (expires 8/2021); 6) a representative from a private environmental conservation organization (expires 8/2021); 7) an elected official from a municipality with a population fewer than 25,000 (expires 8/2017); 8) an elected official from a municipality with a population of 750,000 or

more (expires 8/2017); 9) an elected official from a municipality with a population between 100,000 or more but less than 750,000 (expires 8/2019).

The Advisory Council was created by the 68th Texas Legislature in 1983 and is comprised of 18 members who serve staggered six-year terms. The composition of the Advisory Council is prescribed in §363.041 of the Texas Health and Safety Code.

The Advisory Council reviews and evaluates the effect of state policies and programs on municipal solid waste (MSW) management; makes recommendations on matters relating to MSW management; recommends legislation to encourage the efficient management of MSW; recommends policies for the use, allocation, or distribution of the planning fund; and recommends special studies and projects to further the effectiveness of MSW management and recovery for Texas. The Advisory Council members are required by law to hold at least one meeting every three months. The meetings usually last up to one day and are held in Austin.

To apply for or to nominate an individual for an Advisory Council position, please complete and submit the Advisory Council Application and related materials. The application and additional information are available at: <http://www.tceq.texas.gov/goto/msw/council>.

Nominee evaluations will be made based upon the application, materials submitted, letters of reference, and solid waste management experience. Appointments will be made by the TCEQ Commissioners in Fall 2015.

The application and materials must be postmarked by Monday, August 17, 2015 and can be e-mailed to [mswper@tceq.texas.gov](mailto:mswper@tceq.texas.gov) or sent by mail. For regular mail, please send to: Steve Hutchinson, MC-126, TCEQ, Waste Permits Division, P.O. Box 13087, Austin, Texas 78711-3087. If submitting by overnight mail, please send to: Steve Hutchinson, Building F, TCEQ, Waste Permits Division, 12100 Park 35 Circle, Austin, Texas 78753. Questions regarding the Advisory Council can be directed to Steve Hutchinson at (512) 239-6716, or e-mail address: [mswper@tceq.texas.gov](mailto:mswper@tceq.texas.gov).

TRD-201502612  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: July 7, 2015



## Texas Public Finance Authority

### Notice of Request for Proposals for Underwriting Services

The Texas Public Finance Authority announces its Request for Proposals to create a pool of qualified investment banking firms from which to obtain underwriting services to assist the Authority in its financings for the fiscal biennium beginning September 1, 2015 and ending August 31, 2017, with the option to extend the use of the pool for underwriting services as needed for financings undertaken during the fiscal biennium beginning September 1, 2017, and ending August 31, 2019. A copy of the RFP is available on the Authority's website, at <http://www.tpfa.state.tx.us/rfp.aspx> and on the Texas Electronic State Business Daily at <http://esbd.cpa.state.tx.us/>. Interested firms may also contact the agency directly by email at: [RFP@tpfa.state.tx.us](mailto:RFP@tpfa.state.tx.us). The Board will base its selection on a firm's relevant experience, qualifications, and success in providing the services outlined in the RFP; financial stability and strength; the quality of the information provided regarding the requirements of the RFP; and any other factors relevant to the firm's capacity and ability to meet the Authority's and the State's needs.

Proposals must be submitted by 3:00 p.m., CT, July 24, 2015.

TRD-201502601  
Kevin Van Oort  
General Counsel  
Texas Public Finance Authority  
Filed: July 6, 2015

◆ ◆ ◆  
**Houston-Galveston Area Council**

**Request for Proposals**

The Houston-Galveston Area Council (H-GAC) solicits qualified organizations to provide public outreach services for the Gulf Coast Workforce Board and its operating affiliate, Workforce Solutions. A proposal package will be available for download from [www.wrk-solutions.com](http://www.wrk-solutions.com) or [www.h-gac.com](http://www.h-gac.com) beginning at 10:00 a.m. Central Standard Time on Tuesday, July 14, 2015. H-GAC will also fill requests for hard copies of the proposal package beginning at that time. Prospective bidders may contact Carol Kimmick at (713) 627-3200 or [carol.kimmick@h-gac.com](mailto:carol.kimmick@h-gac.com). A bidder's conference is scheduled for Tuesday, July 28, 2015 at 2:00 p.m. in H-GAC Conference Room A, 3555 Timmons, Second Floor, Houston, Texas 77027. Proposals are due at H-GAC offices on or before 12:00 noon Central Standard Time on Tuesday, August 25, 2015. Mailed proposals must be postmarked no later than Thursday, August 20, 2015. H-GAC will not accept late proposals; we will make no exceptions.

TRD-201502615  
Jack Steele  
Executive Director  
Houston-Galveston Area Council  
Filed: July 7, 2015

◆ ◆ ◆  
**Texas Department of Insurance**

**Company Licensing**

Admission to the State of Texas by INDEMNITY COMPANY OF CALIFORNIA, a foreign fire and/or casualty company. The home office is in Irvine, California.

Application to change the name of AMERICAN CENTENNIAL INSURANCE COMPANY to BERKSHIRE HATHAWAY DIRECT INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Wilmington, Delaware.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201502616  
Sara Waitt  
General Counsel  
Texas Department of Insurance  
Filed: July 7, 2015

◆ ◆ ◆  
**Notice of Application by a Small Employer Carrier to be a Risk-Assuming Carrier**

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a

health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Memorial Hermann Health Plan, Inc.

The application is available for public inspection at the Texas Department of Insurance, Legal Services, Office of Policy Development Counsel. To inspect the application, contact Justin Wayne Beam, Staff Attorney, William P. Hobby Building, 333 Guadalupe, Tower I, Room 940F2, Austin, Texas.

If you wish to comment on the application from Memorial Hermann Health Plan, Inc. to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. On consideration of the application, if the commissioner is satisfied that all requirements of law have been met, the commissioner or his designee may take action to approve Memorial Hermann Health Plan, Inc.'s application to be a risk-assuming carrier.

TRD-201502522  
Sara Waitt  
General Counsel  
Texas Department of Insurance  
Filed: July 2, 2015

◆ ◆ ◆  
**Notice of Application by a Small Employer Carrier to be a Risk-Assuming Carrier**

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

US Health and Life Insurance Company

The application is available for public inspection at the Texas Department of Insurance, Legal Services, Office of Policy Development Counsel. To inspect the application, contact Justin Wayne Beam, Staff Attorney, William P. Hobby Building, 333 Guadalupe, Tower I, Room 940F2, Austin, Texas.

If you wish to comment on the application from US Health and Life Insurance Company to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. On consideration of the application, if the commissioner is satisfied that all requirements of law have been met, the commissioner or his designee may take action to approve US Health and Life Insurance Company's application to be a risk-assuming carrier.

TRD-201502525

Sara Waitt  
General Counsel  
Texas Department of Insurance  
Filed: July 2, 2015



### Notice of Application by a Small Employer Carrier to be a Risk-Assuming Carrier

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Humana Insurance Company

The application is available for public inspection at the Texas Department of Insurance, Legal Services, Office of Policy Development Counsel. To inspect the application, contact Justin Wayne Beam, Staff Attorney, William P. Hobby Building, 333 Guadalupe, Tower I, Room 940F2, Austin, Texas.

If you wish to comment on the application from Humana Insurance Company to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. On consideration of the application, if the commissioner is satisfied that all requirements of law have been met, the commissioner or his designee may take action to approve Humana Insurance Company's application to be a risk-assuming carrier.

TRD-201502526  
Sara Waitt  
General Counsel  
Texas Department of Insurance  
Filed: July 2, 2015



### Notice of Application by a Small Employer Carrier to be a Risk-Assuming Carrier

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code Chapter 1501, Subchapters C-H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Humana Health Plan of Texas, Inc.

The application is available for public inspection at the Texas Department of Insurance, Legal Services, Office of Policy Development Counsel. To inspect the application, contact Justin Wayne Beam, Staff

Attorney, William P. Hobby Building, 333 Guadalupe, Tower I, Room 940F2, Austin, Texas.

If you wish to comment on the application from Humana Health Plan of Texas, Inc. to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. On consideration of the application, if the commissioner is satisfied that all requirements of law have been met, the commissioner or his designee may take action to approve Humana Health Plan of Texas, Inc.'s application to be a risk-assuming carrier.

TRD-201502527  
Sara Waitt  
General Counsel  
Texas Department of Insurance  
Filed: July 2, 2015



### Notice of Application by a Small Employer Carrier to be a Risk-Assuming Carrier

The Texas Department of Insurance gives notice to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. Insurance Code §1501.002(16) defines a small employer health benefit plan issuer as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code Chapter 1501, Subchapters C - H. Insurance Code §1501.301(4) defines a risk-assuming health benefit plan issuer as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Vista Health Plan, Inc.

The application is available for public inspection at the Texas Department of Insurance, Legal Services, Office of Policy Development Counsel. To inspect the application, contact Justin Wayne Beam, Staff Attorney, William P. Hobby Building, 333 Guadalupe, Tower I, Room 940F2, Austin, Texas.

If you wish to comment on the application from Vista Health Plan, Inc. to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. On consideration of the application, if the commissioner is satisfied that all requirements of law have been met, the commissioner or his designee may take action to approve Vista Health Plan, Inc.'s application to be a risk-assuming carrier.

TRD-201502561  
Sara Waitt  
General Counsel  
Texas Department of Insurance  
Filed: July 6, 2015



### Texas Lottery Commission

Instant Game Number 1714 "Bonus Cashword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1714 is "BONUS CASHWORD". The play style is "crossword".

1.1 Price of Instant Ticket.


A. Tickets for Instant Game No. 1714 shall be \$3.00 per Ticket.

1.2 Definitions in Instant Game No. 1714.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.


B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the Ticket. Each Play Symbol is printed in

symbol font in black ink in positive except for dual-imaged games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z and  SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1714 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
 SYMBOL	

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$100 or \$500.

H. High-Tier Prize - A prize of \$5,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1714), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1714-0000001-001.

K. Pack - A Pack of "BONUS CASHWORD" Instant Game Tickets contain 125 Tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 125 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 125 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS CASHWORD" Instant Game No. 1714 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "BONUS CASHWORD" Instant Game is determined once the latex on the Ticket is scratched off to expose up to 141 (one hundred forty-one) possible Play Symbols. The player must scratch all of the 18 YOUR LETTERS and the 2 BONUS LETTERS. The player then scratches all the letters found in the BONUS CASHWORD puzzle that exactly match the YOUR LETTERS and the BONUS LETTERS. If the player has scratched at least 3 complete "words", the player wins the prize found in the PRIZE LEGEND. There will only be one prize paid per ticket. Only letters within the BONUS CASHWORD puzzle that are matched with the YOUR LETTERS and BONUS LETTERS can be used to form a complete "word". In the BONUS CASHWORD puzzle, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR LETTERS or BONUS LETTERS to be considered a complete "word". Words within words are not eligible for a prize. A complete "word" must contain at least three letters. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. One hundred forty-one (141) possible Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Play Symbols in this game do not have Play Symbol Captions;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have 141 (one hundred forty-one) possible Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 141 (one hundred forty-one) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 141 (one hundred forty-one) possible Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Texas Lottery Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to one (1) time.

D. Each Ticket consists of a YOUR LETTERS area, a BONUS LETTERS area and one Bonus Cashword Puzzle Grid.

E. Each word will appear only once per Ticket on the Bonus Cashword Puzzle Grid.

F. Each letter will only appear once per Ticket in the YOUR LETTERS play area and BONUS LETTERS play area.

G. Each Bonus Cashword Puzzle Grid will contain the following: (a) 4 sets of 3 - letter words, (b) 5 sets of 4 - letter words, (c) 3 sets of 5 - letter words, (d) 3 sets of 6 - letter words, (e) 1 set of 7 - letter words, (f) 2 sets of 8 - letter words and (g) 1 set of 9 - letter words.

H. All Bonus Cashword Puzzle Grids will have an equal chance of winning a prize.

I. There will be a minimum of three (3) vowels in the YOUR LETTERS and BONUS LETTERS play areas combined.

J. The length of words found in the Bonus Cashword Puzzle Grid will range from three (3) to nine (9) letters.

K. Only words from the approved word list will appear in the Bonus Cashword Puzzle Grid. (Texas\_Bonus\_v1\_1March2006.doc)

L. None of the prohibited words (Texas\_Prohibited\_v2\_28October2013.doc) will appear horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR LETTERS area (including the BONUS area). In addition, when all rows of the YOUR LETTERS (including the BONUS area) are joined together into a single continuous row of letters (first row, followed by second row, etc.), none of the prohibited words will appear in either the forward or reverse direction.

M. You will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR LETTERS play area that matches a word in the Bonus Cashword Puzzle Grid.

N. No one (1) letter, with the exception of vowels, will appear more than nine (9) times in the Bonus Cashword Puzzle Grid.

O. No Ticket will match eleven (11) words or more.

P. Each Ticket may only win one (1) prize.

Q. Three (3) to ten (10) completed words will be revealed as per the prize structure.

R. Sixteen (16) to eighteen (18) YOUR LETTERS will open at least one (1) letter in the Bonus Cashword Puzzle Grid. At least one (1) of the two (2) BONUS letters will open one (1) or more positions on the Bonus Cashword Puzzle Grid.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS CASHWORD" Instant Game prize of \$3.00, \$5.00, \$10.00, \$20.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BONUS CASHWORD" Instant Game prize of \$5,000 or \$50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS CASHWORD" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "BONUS CASHWORD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "BONUS CASHWORD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated therefor, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is

placed on the back of the Ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated therefore. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 25,080,000 Tickets in the Instant Game No. 1714. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1714 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$3	2,407,680	10.42
\$5	3,611,520	6.94
\$10	501,600	50.00
\$20	300,960	83.33
\$100	53,086	472.44
\$500	12,749	1,967.21
\$5,000	82	305,853.66
\$50,000	25	1,003,200.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.64. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1714 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Texas Lottery Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1714, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201502619  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 8, 2015

◆ ◆ ◆

**Texas Low-Level Radioactive Waste Disposal Compact Commission**

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

American Electric Power ("AEP") (TLLRWDC #1-0091-00)  
 D.C.Cook Plant  
 One Cook Place  
 Bridgman, Michigan 49106

The application will be placed on the Compact Commission web site, [www.tllrwdcc.org](http://www.tllrwdcc.org), where it will be available for inspection and copying.

Comments on the application are due to be received by July 27, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission  
Attn: Leigh Ing, Executive Director  
333 Guadalupe St., #3-240  
Austin, Texas 78701

Comments may also be submitted via email to: [administration@tllr-wdccc.org](mailto:administration@tllr-wdccc.org).

TRD-201502484  
Audrey Ferrell  
Administrator  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
Filed: July 1, 2015



#### Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Bionomics, Inc. (TLLRWDC #1-0092-00)

P.O. Box 817

Kingston, Tennessee 37763

The application will be placed on the Compact Commission web site, [www.tllrwdccc.org](http://www.tllrwdccc.org), where it will be available for inspection and copying.

Comments on the application are due to be received by July 27, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission  
Attn: Leigh Ing, Executive Director  
333 Guadalupe St., #3-240  
Austin, Texas 78701

Comments may also be submitted via email to: [administration@tllr-wdccc.org](mailto:administration@tllr-wdccc.org).

TRD-201502485  
Audrey Ferrell  
Administrator  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
Filed: July 1, 2015



#### Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Duke Energy-Brunswick Nuclear Plant (TLLRWDC #1-0093-00)

P.O. Box 10429

Southport, North Carolina 28461

The application will be placed on the Compact Commission web site, [www.tllrwdccc.org](http://www.tllrwdccc.org), where it will be available for inspection and copying.

Comments on the application are due to be received by July 27, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission  
Attn: Leigh Ing, Executive Director  
333 Guadalupe St., #3-240  
Austin, Texas 78701

Comments may also be submitted via email to: [administration@tllr-wdccc.org](mailto:administration@tllr-wdccc.org).

TRD-201502486  
Audrey Ferrell  
Administrator  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
Filed: July 1, 2015



#### Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Exelon Generation Company (TLLRWDC #1-0094-00)

4300 Winfield Road

Warrenville, Illinois 60555

The application will be placed on the Compact Commission web site, [www.tllrwdccc.org](http://www.tllrwdccc.org), where it will be available for inspection and copying.

Comments on the application are due to be received by July 27, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission  
Attn: Leigh Ing, Executive Director  
333 Guadalupe St., #3-240  
Austin, Texas 78701

Comments may also be submitted via email to: [administration@tllr-wdccc.org](mailto:administration@tllr-wdccc.org).

TRD-201502487  
Audrey Ferrell  
Administrator  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
Filed: July 1, 2015



#### Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

PerkinElmer, Inc. (TLLRWDC #1-0095-00)



549 Albany St.  
Boston, Massachusetts 02118

The application will be placed on the Compact Commission web site, [www.tllrwdcc.org](http://www.tllrwdcc.org), where it will be available for inspection and copying.

Comments on the application are due to be received by July 27, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission  
Attn: Leigh Ing, Executive Director  
333 Guadalupe St., #3-240  
Austin, Texas 78701

Comments may also be submitted via email to: [administration@tllrwdcc.org](mailto:administration@tllrwdcc.org).

TRD-201502488  
Audrey Ferrell  
Administrator  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
Filed: July 1, 2015



#### Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Philotechnics, Ltd. (TLLRWDC #1-0096-00)

201 Renovare Blvd.  
Oak Ridge, Tennessee 37830

The application will be placed on the Compact Commission web site, [www.tllrwdcc.org](http://www.tllrwdcc.org), where it will be available for inspection and copying.

Comments on the application are due to be received by July 27, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission  
Attn: Leigh Ing, Executive Director  
333 Guadalupe St., #3-240  
Austin, Texas 78701

Comments may also be submitted via email to: [administration@tllrwdcc.org](mailto:administration@tllrwdcc.org).

TRD-201502489  
Audrey Ferrell  
Administrator  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
Filed: July 1, 2015



#### Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the

Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:  
Thermo Process Instruments, L.P. (TLLRWDC #1-0097-00)

27 Forge Parkway  
Franklin, Massachusetts 02034

The application will be placed on the Compact Commission web site, [www.tllrwdcc.org](http://www.tllrwdcc.org), where it will be available for inspection and copying.

Comments on the application are due to be received by July 27, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission  
Attn: Leigh Ing, Executive Director  
333 Guadalupe St., #3-240  
Austin, Texas 78701

Comments may also be submitted via email to: [administration@tllrwdcc.org](mailto:administration@tllrwdcc.org).

TRD-201502490  
Audrey Ferrell  
Administrator  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
Filed: July 1, 2015



#### Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Tennessee Valley Authority ("TVA") (TLLRWDC #1-0098-00)

1101 Market Street  
Chattanooga, Tennessee 37402

Mail Stop: BR 3C-C

The application will be placed on the Compact Commission web site, [www.tllrwdcc.org](http://www.tllrwdcc.org), where it will be available for inspection and copying.

Comments on the application are due to be received by July 27, 2015. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission  
Attn: Leigh Ing, Executive Director  
333 Guadalupe St., #3-240  
Austin, Texas 78701

Comments may also be submitted via email to: [administration@tllrwdcc.org](mailto:administration@tllrwdcc.org).

TRD-201502491  
Audrey Ferrell  
Administrator  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
Filed: July 1, 2015



## Texas Medical Board

### Correction of Error

The Texas Medical Board adopted amendments to 22 TAC §190.8, concerning Violation Guidelines, in the May 29, 2015 issue of the *Texas Register* (40 TexReg 3159). An error appears in the preamble of the rulemaking notice.

On page 3164, left column, sixth paragraph, the notice of adoption states that, "The most important overall conclusion of the study was that, "... more study was needed to actually determine if access to care was enhanced."

The notice of adoption was incorrect in using quotation remarks, as the statement was a paraphrase of information taken from the study. Specifically, the paraphrase was generated based on the following sentences from the study:

"Our results indicate that Teladoc might have increased access for the small subset of enrollees who used it, although this finding requires further investigation."

"Further research is needed to understand whether Teladoc might be improving access for patients with lower incomes and those in rural areas and, if not, whether it could be positioned to do so in the future."

The notice of adoption also states that, "The study found: Teladoc's model could further fragment healthcare; Teladoc physicians are unable to use visual clues to aid in diagnosis; the limitations of telephone only consult could lead to misdiagnosis and higher rates of follow-up-care-findings that have already been demonstrated with e-visits and telephone consultations."

The notice of adoption was incorrect in characterizing the statements above as the study's findings. Rather, these are statements by the study's author setting out contextual background at the beginning of the article.

The following statement was given as a conclusion of the study, "the adult users of Teladoc were younger and healthier and lived in more affluent communities." While this statement was a conclusion of the study, the quotation did not include the full sentence from the study. The full sentence reads, "Adult Teladoc users were younger and healthier and lived in more affluent communities than enrollees who visited physicians' offices or the ED for similar conditions."

TRD-201502626



## Texas Parks and Wildlife Department

### General Plan for Prescribed Burning on TPWD Lands

#### A. Purpose

Fire is a major ecological force in many terrestrial ecosystems throughout the world. Historically, fire in conjunction with other environmental factors such as topography and climate, has played a major role in determining the distribution of many plants and plant communities worldwide.

This plan establishes minimum standards and requirements for all wildland fire management activities on TPWD managed lands which are essential for the protection of human life, property and for the stewardship and sustainability of Texas' natural and cultural resources. ***Wildland fire is considered any fire that is not a structural or vehicle fire. Structural and vehicle fires are not covered in this plan.***

Four distinct categories of fire management activities may occur on TPWD managed lands:

**Prescribed burn:** Any fire intentionally ignited for management actions to meet specific objectives. A written, approved prescribed burn plan must exist prior to ignition.

**Wildland Fire Use:** The use of a naturally-ignited wildfire to accomplish specific resource management objectives in pre-defined areas as outlined in a site specific wildland fire use plan.

**Wildfire:** An unplanned wildland fire including unauthorized human-caused fires, escaped prescribed burns, and all other wildland fires where the objective is to extinguish the fire.

**Brush/Debris Pile Burning:** The burning of brush and debris, composed entirely of organic matter that naturally grows at a site and exclusive of any man-made or man-modified materials.

Fire has the potential to drastically alter vegetation and wildlife habitat, and may contribute to or hinder the achievement of a site's resource management objectives. A site's fire management plan will be designed to meet resource management objectives, ensure facility protection, and ensure the safety of the public and department personnel. The Incident Command System (ICS) and firefighting standards set forth by the National Wildfire Coordinating Group (NWCG) will be adopted for all fire management activities, except where noted.

Division specific requirements and procedures may be implemented by the Division Director or designee.

#### B. Wildland Fire Training and fitness requirements

All TPWD staff participating in wildland fire activities with active fire will have completed the minimum training requirements for a Fire Fighter Type Two as described in National Incident Management System (NIMS) Wildland Fire Qualifications System Guide, PMS 310-1. TPWD staff leading a burn (Burn Manager or Prescribed Burn Boss) must meet or exceed the training and experience requirements of the Texas Prescribed Burning Board. Each Division shall be responsible for developing minimum training and experience requirements for burn crew members.

All personnel participating in wildland fire operations must be screened annually for physical fitness according to the Wildland Firefighter Medical Standards Program adopted by the NWCG.

The minimum fitness level required for staff participating in operations position roles on wildland fire operations managed by TPWD shall be "moderate" as measured using the Work Capacity Test (WCT). The fitness level required for staff participating in support position roles on wildland fire operations managed by TPWD will be identified in division operating procedures. The fitness level required for staff participating with cooperators will be guided by *NIMS Wildland Fire Qualifications System Guide, PMS 310-1, Federal Wildland Fire Qualifications Supplement or cooperator agreements.*

#### C. Use of Prescribed Burns

The primary purpose of prescribed burns on TPWD lands is to utilize fire as an ecological process and simulate the effects of natural fire events. The application of fire fulfills numerous management objectives including reduction of excessive fuel loads, increased herbaceous species and available browse, control of invasive species, increasing species diversity and richness, and facilitation of the long-term objectives for natural habitat and community restoration and maintenance.

Prescribed burns on TPWD lands shall be conducted in association with these management objectives and/or other research endeavors in order to document the long-term effects of this practice on habitat quality or habitat restoration.

Prescribed burns are the most effective and efficient method to reduce fuel loadings. Fire hazard is directly correlated to fuel loads, therefore,

reducing the fuel loads will not only reduce the fire hazard, but also the impact a wildfire could have on a site, its facilities, and its natural communities.

#### **D. Prescribed Burn Planning**

A site-specific prescribed burn plan must be completed and approved by staff as designated by the Executive Director in the division operating plans, prior to implementing a prescribed burn.

Site-specific prescribed burn plans shall contain: a description of the project area, including fuels and any potential hazards; purpose and objective of burn; pre-burn notifications, burn prescription parameters, expected fire behavior; pre-burn considerations and preparation requirements; ignition and holding strategies; required staffing, equipment, and contingency resources; smoke management, contingency plan for escapes; mop up plan; and maps including individual burn units, pre-burn actions, and surrounding areas and access routes for contingency actions. Prescribed burn plan templates and formats may be Division specific.

If ground disturbing actions are anticipated or if cultural resources may be impacted, appropriate cultural resources clearance must be obtained in accordance with existing TPWD procedures prior to implementing the prescribed burn. Where there is the potential to impact state or federally listed endangered or threatened species or communities, appropriate concurrence shall be acquired as needed.

Prescribed burns shall only be implemented when there is an approved prescribed burn plan and the necessary personnel and equipment resources stated in the approved plan are available on the burn site and the prescription conditions can be met.

#### **E. Outreach and Notifications**

In coordination with the prescribed burn manager, site managers shall be responsible for providing adequate advance notice of the intent to conduct a prescribed burn(s) to neighboring landowners, appropriate state and local officials, and the community at large in the vicinity of the prescribed burn area. Notifications will be made as required by HB 801 (Section 1 Chapter 11 Parks and Wildlife Code, Subchapter M).

Neighboring landowner notices shall include the planned start and end dates of the prescribed burn; any safety precautions the landowner should take to ensure the safety of the landowner's property before, during, and after the burn; a map of the prescribed burn area, including the location of any utility infrastructure within prescribed burn area; the methods proposed for use in conducting the burn; and contact information for the prescribed burn manager or site manager.

Notice to local and state officials shall include city or county emergency services dispatch center; local fire departments; water utility officials with water facilities within a two mile radius of the prescribed burn area; owners of any utility infrastructure within the prescribed burn area; and other parties identified in the division's operating procedures or the site-specific prescribed burn plan.

The Texas Commission on Environmental Quality (TCEQ) shall be notified and applicable approval documentation obtained in writing as required by Outdoor Burning Rule, Title 30, Texas Administrative Code, §§11.201 - 221 ([www.tceq.texas.gov/rules/](http://www.tceq.texas.gov/rules/)).

Public notification to the community at large shall be published in a newspaper of general circulation in the county or counties in which the burn will be conducted or broadcast in the accepted media format required by state law for official public notifications. Additional public outreach and notification may be defined in the division's operating procedures or in the site-specific prescribed burn plan.

#### **F. Prescribed Burn Implementation**

The prescribed burn manager shall be responsible for ensuring required notifications are completed; adequate personnel and equipment are on site for the burn; burn crew has appropriate personal protective gear and has been briefed on objectives, fuels, expected weather and fire behavior, and appropriate safety precautions; burning is conducted only when observed or forecasted environmental conditions are within prescription parameters; all personnel are trained to levels commensurate with their level of responsibility on the burn crew and for that specific operation; all pre-burn and contingency measures outlined in the prescribed burn plan are complete.

It is the TPWD site manager's responsibility to coordinate prescribed burn activity with visitor use. The site manager, in consultation with the burn manager, shall determine if the department facility should be closed to visitors during the burn. If the facility remains open and public use areas occur within a prescribed burn project area, those areas should be closed during the burn, and all visitors should be notified of the planned burn.

Prescriptions will limit prescribed burning to those periods when atmospheric and wind conditions are within acceptable guidelines- these may be locally specific, and shall be identified in the plan in order to minimize risks associated with the potential effects of smoke on the local population and resources. Immediately prior to burning a weather forecast shall be obtained from the local National Weather Service office to determine the expected conditions for the day of the burn and any predicted changes in weather conditions within 24 - 48 hours.

All infrastructure and utilities shall be protected (i.e., electrical transformers, electrical conduit, phone and fiber optic lines, oil and gas wells, barns and buildings, etc.).

Development of a smoke management plan shall include plotting the expected direction of the smoke plume, identifying all smoke sensitive areas in the vicinity and their distances from the burn unit, identifying critical smoke sensitive areas, and minimizing the risk to adjacent properties and populations. Public roads and airports must be considered at risk for smoke, and appropriate precautions must be taken to minimize risks to traffic. Department personnel conducting prescribed burns shall comply with Texas Commission on Environmental Quality (TCEQ) requirements found in Title 30, Texas Administrative Code, §111.201 - 221 ([www.tceq.texas.gov/rules/](http://www.tceq.texas.gov/rules/)).

Prescribed burns shall be monitored and documented to record the significant fire behavior and decisions made during the operation and to determine whether specified objectives were achieved.

Burn manager will work with county officials in determining appropriateness of burning during county burn bans. Division Director or designee approval is required to conduct a prescribed burn during a burn ban. No fires shall be ignited when the Texas Interagency Coordination Center (TICC) has rated the "TFS Regional Fire Risk Level" at a "5- extreme," which reflects the current demand on fire protection resources.

#### **G. Wildland Fire Use**

Wildland fire use is the application of the appropriate management response to naturally ignited wildland fires to accomplish specific resource management objectives in pre-defined areas, as outlined in the site's Wildland Fire Use Plan. Wildland fire use planning and implementation must ensure public and firefighter safety, natural and cultural resource benefits, and interagency collaboration.

A written, approved site-specific Wildland Fire Use Plan is required prior to utilizing natural ignitions as a management tool. The plan shall identify potential wildland fire use zones and describe the environmental parameters under which a naturally ignited fire may be used to meet

predetermined management objectives. Until a Wildland Fire Use Plan is approved for a site, all unplanned wildland fires shall be suppressed.

Using wildland fire to meet site management goals and objectives may require additional cross-training of cooperator fire suppression resources and establishment of MOUs between fire suppression resources and neighboring landowners. Specific requirements for Wildland Fire Use Plans and implementation shall be described in the division's operating procedures.

#### H. Wildfire Management

A Wildfire is considered any unplanned wildland fire including unauthorized human-caused fires, escaped prescribed burns, and all other wildland fires where the objective is to extinguish the fire. The protection of human life, facilities, equipment, and cultural and natural resources are all of the utmost importance.

All wildfires shall be reported to the appropriate staff as designated by the Division Director. If a wildfire occurs on the TPWD lands, it shall be maintained within established burn units, if possible. Control measures should be limited to natural barriers, existing roads, firebreaks, trails and established black lines. Planned control measures should be conducted for protection of personnel, facilities, and equipment. Under most conditions, fuels between firebreaks and the existing area of the wildfire should be burned out to help contain the fire. Spot-fires should be extinguished immediately.

The use of ground-disturbing activities should be limited to management unit boundaries and designated firebreaks or access routes as identified by local TPWD facility staff. If the evaluation of the fire behavior reveals that the fire cannot be safely controlled within a given unit, and/or life or property is threatened, then more aggressive control actions may be initiated considering the value of natural and cultural resources when using ground disturbing devices such as fire plows, motor graders, bulldozers, etc.

Site managers shall attempt to keep fuels from accumulating to hazardous levels along management unit boundaries or adjacent to facilities or structures. Appropriate firebreaks should be maintained around structures and facilities at all times. Leaf litter should be removed from the roofs of all structures at least biannually. Areas around structures and facilities should have the underbrush removed to reduce fire hazards. Bare ground or green lines should also be maintained under and around interpretive and similar structures. Special actions may be warranted during periods of extreme fire danger, such as widening of firebreaks, restricting visitor use, posting fire danger warnings, or prohibiting the use of open fires.

When trained personnel and equipment are available, TPWD staff with supervisor approval, may respond to requests for assistance from fire departments or other fire management agency incident commanders to assist in the suppression of wildfires off TPWD lands.

#### I. Emergency Response Equipment

Equipment used for prescribed burns can be a valuable tool in suppression of wildfires. Fire equipment used to conduct prescribed burns may also be used to suppress wildfires threatening structures or utility locations. TPWD staff should be aware of the location of all firefighting equipment and be knowledgeable in its use.

Emergency response equipment shall be routinely inspected, maintained in optimal operating condition, and used for fire management purposes only. TPWD staff likely to respond to fires should participate in training, coordination and incident command structure with the entities and organizations having jurisdiction for emergency wildfire situations.

#### J. Burning of Brush or Debris Piles

Trees, brush, grass, leaves, branch trimmings, or other plant growth may be burned on a TPWD property in accordance with the TCEQ outdoor burning requirements found in Title 30, Texas Administrative Code, §111.209 paragraph 4. ([www.tceq.texas.gov/rules/](http://www.tceq.texas.gov/rules/)).

Burning of brush piles on TPWD lands should be completed only when conditions will limit and restrict the spread of fire through fine fuels, and when smoke will not cause a nuisance to sensitive receptors. Additional requirements for burning brush/debris piles shall be division specific, according to division operating procedures.

Acceptable conditions may include, but are not limited to, high relative humidity, appropriate fuel moistures, and/or adequate fire breaks around the brush pile. These conditions should be forecasted to last until the pile has been completely consumed, which could be several days.

TRD-201502542

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: July 3, 2015



### Public Utility Commission of Texas

#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 30, 2015, pursuant to the Texas Water Code.

Docket Style and Number: Application of HILCO United Services, Inc. and The Forty-Eight Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hill County, Docket Number 44891.

The Application: HILCO United Services, Inc. (HILCO) and The Forty-Eight Water Supply Corporation (collectively, Applicants) filed an application for sale, transfer, or merger of facilities and certificate of convenience (CCN) and necessity rights in Hill County. Specifically, The Forty-Eight Water Supply Corporation proposes the sale of all facilities and certificate rights under water CCN No. 11610 to HILCO. The area includes the Summerrest Addition and Cedar Crest subdivisions in Hill County, comprising approximately two acres and 48 current customers. As a result of this transaction, the 48 customers to be transferred will experience a change in rates.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. *Further information may also be obtained by calling* the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 44891.

TRD-201502608

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 7, 2015



#### Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 1, 2015, to amend a certificate of convenience and necessity for a proposed transmission line in Bee and Goliad Counties, Texas.

Docket Style and Number: Application of AEP Texas Central Company to Amend its Certificate of Convenience and Necessity for the Tuleta to Euler to Coletto Creek Double-Circuit 138-kV Transmission Line in Bee and Goliad Counties, Docket Number 44837.

The Application: AEP Texas Central Company (AEP TCC) filed an application for a proposed project designated as the Tuleta to Euler to Coletto Creek Double-Circuit Transmission Line Project. The facilities include construction of a new double-circuit 138-kV transmission line on steel single-pole structures with only one circuit to be installed initially. The line will extend from the new AEP TCC Tuleta Substation to the proposed AEP TCC Euler Substation and then to the existing AEP TCC Coletto Creek Substation. The project is presented as two separate segments. Routes from Tuleta to Euler are identified as "TE" routes, and routes from Euler to Coletto Creek are identified as "EC" routes. The total estimated cost for the project ranges from approximately \$59.1 million to \$76.4 million depending on the route chosen.

The proposed project is presented with seven alternate routes for the TE Segment and 19 alternate routes for the EC Segment and is estimated to be approximately 45 miles to 55 miles in length. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is August 17, 2015. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44837.

TRD-201502607  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 7, 2015



#### Notice of Application to Amend Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend water certificate of convenience and necessity (CCN) in Lubbock County, Texas.

Docket Style and Number: Application of City of Lubbock to Amend a Certificate of Convenience and Necessity in Lubbock County, Docket Number 44892.

The Application: The City of Lubbock filed an application to amend its water certificate of convenience (CCN) Number 10627 in Lubbock County, Texas. The City seeks to amend its CCN to include all of the current area within the city limits of Lubbock and city-owned properties as of June 1, 2015. Estimated population within the new expansion area is 25,000.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals

with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44892.

TRD-201502613  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 7, 2015



#### Notice of Application to Amend Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend water certificate of convenience and necessity (CCN) in Parker County, Texas.

Docket Style and Number: Application of City of Fort Worth to Amend its Certificate of Convenience and Necessity in Parker County, Docket Number 44896.

The Application: The City of Fort Worth filed with the Public Utility Commission of Texas (commission) an application to amend its water certificate of convenience (CCN) No. 12311 in Parker County, Texas. The purpose of the requested amendment is to provide water and sewer services to a new development, to be known as MorningStar Ranch.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44896.

TRD-201502614  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 7, 2015



#### Notice of Intent to Implement Minor Rate Changes Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 30, 2015, to implement minor rate changes pursuant to 16 Texas Administrative Code §26.171 (TAC).

Tariff Control Title and Number: North Texas Telephone Statement of Intent to Implement Minor Rate Changes Pursuant to 16 TAC §26.171 and PURA Chapter 53, Subchapter G, Tariff Control Number 44893.

The Application: North Texas Telephone Company (North Texas) filed an application with the commission for revisions to its Local Exchange Tariff and Long Distance Message Telecommunications Service Tariff. North Texas proposed an effective date of August 1, 2015. The estimated revenue increase to be recognized by the applicant is \$13,080 in gross annual intrastate revenues. The applicant has 407 access lines (residential and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by July 27, 2015, the application will be docketed. The 5% limitation will be calculated based upon the total number of

customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the commission by July 27, 2015. Requests to intervene should be filed with the commission's Filing Clerk at Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 44893.

TRD-201502617  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 7, 2015



### Notice of Intent to Implement Minor Rate Changes Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 30, 2015, to implement minor rate changes pursuant to 16 Texas Administrative Code §26.171 (TAC).

Tariff Control Title and Number: Totelcom Communications, LLC Statement of Intent to Implement Minor Rate Changes Pursuant to 16 TAC §26.171 and PURA Chapter 53, Subchapter G, Tariff Control Number 44894.

The Application: Totelcom Communications, LLC (Totelcom) filed an application with the commission for revisions to its Local Exchange Tariff and Long Distance Message Telecommunications Service Tariff. Totelcom proposed an effective date of August 1, 2015. The estimated revenue increase to be recognized by the applicant is \$94,584 in gross annual intrastate revenues. The applicant has 3,351 access lines (residential and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by July 27, 2015, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the commission by July 27, 2015. Requests to intervene should be filed with the commission's Filing Clerk at Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 44894.

TRD-201502618  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 7, 2015



### Notice of Petition for Recovery of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on July 1, 2015, for

restoration of Universal Service Funding pursuant to Public Utility Regulatory Act §56.025 and 16 Texas Administrative Code §26.406.

Docket Style and Number: Application of Border to Border Communications, Inc. to Recover Funds From the Texas Universal Service Fund Pursuant to PURA §56.025 and 16 TAC §26.406. Docket Number 44901.

The Application: Border to Border Communications, Inc. (BTBC) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to BTBC. The petition requests that the commission allow recovery of funds from the TUSF in the amount of \$847,637 to replace the projected 2015 FUSF revenue reductions. BTBC is not seeking any rate increases through this proceeding.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44901.

TRD-201502622  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 8, 2015



## Texas Department of Transportation

### Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Thursday, August 6, 2015 at 10:00 a.m. at 118 East Riverside Drive, First Floor RTI Conference Room, in Austin, Texas to receive public comments on the development of the 2016 Unified Transportation Program (UTP), including the highway project selection process related to the UTP.

Transportation Code, §201.991 provides that the department shall develop a UTP covering a period of 10 years to guide the development and authorize construction of transportation projects. Transportation Code, §201.602 requires the Texas Transportation Commission (commission) to annually conduct a hearing on its highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. The commission has adopted rules located in Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to the project selection process and the development of the UTP.

Information regarding the proposed 2016 UTP and highway project selection process will be available at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5038, and on the department's website at: [http://www.txdot.gov/public\\_involvement/utp.htm](http://www.txdot.gov/public_involvement/utp.htm).

Persons wishing to speak at the hearing may register in advance by notifying the Transportation Planning and Programming Division, at (512) 486-5038 not later than Wednesday, August 5, 2015, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested

person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed 2016 UTP to James W. Koch, Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the proposed 2016 UTP by phone at (800) 687-8108. In order to be considered, all comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, August 17, 2015.

TRD-201502600  
Angie Parker  
Associate General Counsel  
Texas Department of Transportation  
Filed: July 6, 2015



## Texas Water Development Board

### Notice of Public Hearing on the Draft State Fiscal Year 2016 Clean Water and Drinking Water State Revolving Fund Intended Use Plans

The Texas Water Development Board (TWDB) will conduct a public hearing on the draft State Fiscal Year (SFY) 2016 Clean Water State Revolving Fund (CWSRF) Intended Use Plan (IUP) and the Drinking Water State Revolving Fund (DWSRF) IUP. The hearing will begin promptly at 10:00 a.m. on July 29, 2015, in Room 170 of the Stephen F. Austin Building at 1700 North Congress Avenue, Austin, Texas 78701.

The CWSRF IUP contains a list of wastewater projects in prioritized order which will be considered for funding in SFY 2016. The draft SFY 2016 CWSRF IUP has been prepared pursuant to rules adopted by the TWDB in 31 Texas Administrative Code Chapter 375.

The DWSRF IUP contains a list of drinking water projects in prioritized order which will be considered for funding in SFY 2016. The draft SFY 2016 DWSRF IUP has been prepared pursuant to the rules adopted by the TWDB in 31 Texas Administrative Code Chapter 371.

Interested persons are encouraged to attend the hearing and to present comments concerning the draft IUPs. Those who cannot attend the hearing may provide comments through the following three alternative methods:

- (1) submit comments via the online comment page: <https://www2.twdb.texas.gov/apps/iup/>;
- (2) email comments to the electronic mail address: [iupcomments@twdb.texas.gov](mailto:iupcomments@twdb.texas.gov); or
- (3) submit written comments to the postal mail address:

Ms. Jo Dawn Bomar, Director, Program Administration and Reporting,  
Texas Water Development Board,  
P.O. Box 13231,  
Austin, Texas 78711

The TWDB will receive public comment on the draft IUPs until 5:00 p.m. on August 8, 2015. Interested persons may review the draft CWSRF and DWSRF IUPs at the TWDB's website at [http://www.twdb.texas.gov/financial/programs/CWSRF/doc/Draft\\_SFY2016\\_CWSRF\\_IUP.pdf](http://www.twdb.texas.gov/financial/programs/CWSRF/doc/Draft_SFY2016_CWSRF_IUP.pdf) and [http://www.twdb.texas.gov/financial/programs/DWSRF/doc/Draft\\_SFY2016\\_DWSRF\\_IUP.pdf](http://www.twdb.texas.gov/financial/programs/DWSRF/doc/Draft_SFY2016_DWSRF_IUP.pdf) respectively.

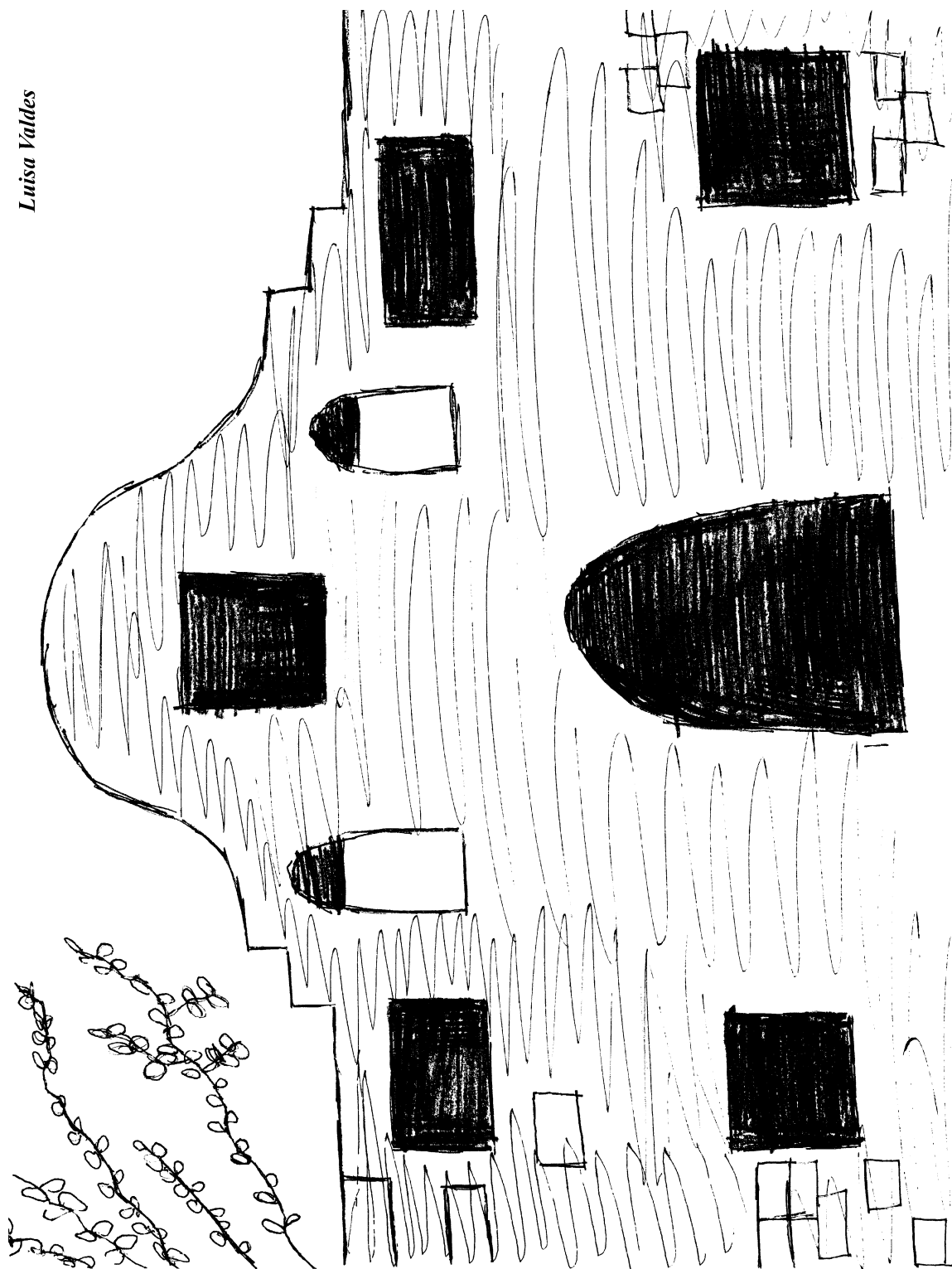
Please note that time limits on public comments may be imposed to allow all attendees to be heard. Additionally, the TWDB discourages comments requesting a revised rating based on project information not previously submitted.

Persons with disabilities who plan to attend this meeting and need auxiliary aids or services are requested to contact Merry Klonower at (512) 463-8165 two (2) business days prior to the hearing so that appropriate arrangements can be made.

TRD-201502625  
Les Trobman  
General Counsel  
Texas Water Development Board  
Filed: July 8, 2015



Luisa Valdes





## How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

##### Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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**\*Note:** Back issues of the *Texas Register*, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

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